

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

FORM 10-Q
(Mark one)

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

For the quarterly period ended June 30, 2023

OR

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

For the transition period from _____ to _____

Commission File Number: 001-41063

JOURNEY MEDICAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

47-1879539

(I.R.S. Employer Identification No.)

9237 E Via de Ventura Blvd., Suite 105, Scottsdale, AZ 85258

(Address of principal executive offices and zip code)

(480) 434-6670

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	DERM	NASDAQ Capital Market

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

Indicate by check mark whether the registrant has submitted electronically, if any, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large Accelerated Filer	<input type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-accelerated Filer	<input checked="" type="checkbox"/>	Smaller Reporting Company	<input checked="" type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

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

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

<u>Class of Common Stock</u>	<u>Outstanding Shares as of August 10, 2023</u>
Common Stock Class A, \$0.0001 par value	6,000,000
Common Stock, \$0.0001 par value	12,475,115

JOURNEY MEDICAL CORPORATION
Quarterly Report on Form 10-Q

TABLE OF CONTENTS

PART I.	FINANCIAL INFORMATION	
Item 1.	Condensed Consolidated Financial Statements (unaudited)	1
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	17
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	27
Item 4.	Controls and Procedures	28
PART II.	OTHER INFORMATION	
Item 1.	Legal Proceedings	29
Item 1A.	Risk Factors	29
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	30
Item 3.	Defaults Upon Senior Securities	30
Item 4.	Mine Safety Disclosures	30
Item 5.	Other Information	30
Item 6.	Exhibits	31
SIGNATURES		32

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (unaudited)

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Balance Sheets
(Dollars in thousands except for share and per share amounts)

	<u>June 30,</u> <u>2023</u>	<u>December 31,</u> <u>2022</u>
ASSETS		
Current assets		
Cash and cash equivalents	\$ 8,230	\$ 32,003
Accounts receivable, net of reserves	16,737	28,208
Inventory	12,166	14,159
Prepaid expenses and other current assets	1,796	3,309
Restricted cash	8,750	—
Total current assets	<u>47,679</u>	<u>77,679</u>
Intangible assets, net	21,916	27,197
Operating lease right-of-use asset, net	146	189
Other assets	6	95
Total assets	<u>\$ 69,747</u>	<u>\$ 105,160</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 31,773	\$ 36,570
Due to related party	603	413
Accrued expenses	23,329	19,388
Accrued interest	83	160
Income taxes payable	35	35
Line of credit	—	2,948
Term loan, short-term (net of discount of \$58)	9,942	—
Deferred cash payment (net of discount of \$9)	—	4,991
Installment payments – licenses, short-term	2,333	2,244
Operating lease liability, short-term	95	83
Total current liabilities	<u>68,193</u>	<u>66,832</u>
Term loan, long-term (net of discount of \$174)	—	19,826
Installment payments – licenses, long-term	1,490	1,412
Operating lease liability, long-term	59	108
Total liabilities	<u>69,742</u>	<u>88,178</u>
Commitments and contingencies (Note 14)		
Stockholders' equity		
Common stock, \$.0001 par value, 50,000,000 shares authorized, 12,133,890 and 11,765,700 shares issued and outstanding as of June 30, 2023 and December 31, 2022, respectively	1	1
Common stock - Class A, \$.0001 par value, 50,000,000 shares authorized, 6,000,000 shares issued and outstanding as of June 30, 2023 and December 31, 2022	1	1
Additional paid-in capital	87,004	85,482
Accumulated deficit	(87,001)	(68,502)
Total stockholders' equity	<u>5</u>	<u>16,982</u>
Total liabilities and stockholders' equity	<u>\$ 69,747</u>	<u>\$ 105,160</u>

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

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Statements of Operations
(Dollars in thousands except for share and per share amounts)

	Three-Month Periods Ended June 30,		Six-Month Periods Ended June 30,	
	2023	2022	2023	2022
Revenue:				
Product revenue, net	\$ 16,961	\$ 18,235	\$ 29,126	\$ 39,031
Other revenue	211	56	259	2,556
Total revenue	17,172	18,291	29,385	41,587
Operating expenses				
Cost of goods sold – product revenue	7,767	7,633	14,216	15,836
Research and development	1,774	2,609	3,807	3,875
Selling, general and administrative	12,141	15,191	25,433	29,906
Loss on impairment of intangible assets	3,143	—	3,143	—
Total operating expenses	24,825	25,433	46,599	49,617
Loss from operations	(7,653)	(7,142)	(17,214)	(8,030)
Other expense (income)				
Interest income	(79)	(4)	(201)	(7)
Interest expense	756	454	1,406	843
Foreign exchange transaction losses	33	—	80	—
Total other expense (income)	710	450	1,285	836
Loss before income taxes	(8,363)	(7,592)	(18,499)	(8,866)
Income tax (benefit) expense	—	(64)	—	40
Net Loss	\$ (8,363)	\$ (7,528)	\$ (18,499)	\$ (8,906)
Net loss per common share:				
Basic and diluted	\$ (0.46)	\$ (0.43)	\$ (1.03)	\$ (0.51)
Weighted average number of common shares:				
Basic and diluted	18,005,055	17,455,894	17,906,671	17,386,538

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

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Statements of Changes in Stockholders' Equity
(Dollars in thousands except for share and per share amounts)

Six-Month Period Ended June 30, 2023

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2022	11,765,700	\$ 1	6,000,000	\$ 1	\$ 85,482	\$ (68,502)	\$ 16,982
Share-based compensation	—	—	—	—	1,519	—	1,519
Exercise of options for cash	5,000	—	—	—	3	—	3
Issuance of common stock for vested restricted stock units	363,190	—	—	—	—	—	—
Net loss	—	—	—	—	—	(18,499)	(18,499)
Balance as of June 30, 2023	12,133,890	\$ 1	6,000,000	\$ 1	\$ 87,004	\$ (87,001)	\$ 5

Three-Month Period Ended June 30, 2023

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of March 31, 2023	11,834,362	\$ 1	6,000,000	\$ 1	\$ 86,128	\$ (78,638)	\$ 7,492
Share-based compensation	—	—	—	—	873	—	873
Exercise of options for cash	5,000	—	—	—	3	—	3
Issuance of common stock for vested restricted stock units	294,528	—	—	—	—	—	—
Net loss	—	—	—	—	—	(8,363)	(8,363)
Balance as of June 30, 2023	12,133,890	\$ 1	6,000,000	\$ 1	\$ 87,004	\$ (87,001)	\$ 5

Six-Month Period Ended June 30, 2022

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2021	11,316,344	\$ 1	6,000,000	\$ 1	\$ 80,915	\$ (38,874)	\$ 42,043
Share-based compensation	—	—	—	—	1,547	—	1,547
Exercise of stock options for cash	133,149	—	—	—	111	—	111
Issuance of common stock for vested restricted stock units	107,000	—	—	—	—	—	—
Net loss	—	—	—	—	—	(8,906)	(8,906)
Balance as of June 30, 2022	11,556,493	\$ 1	6,000,000	\$ 1	\$ 82,573	\$ (47,780)	\$ 34,795

Three-Month Period Ended June 30, 2022

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of March 31, 2022	11,318,344	\$ 1	6,000,000	\$ 1	\$ 81,688	\$ (40,252)	\$ 41,438
Share-based compensation	—	—	—	—	774	—	774
Exercise of stock options for cash	133,149	—	—	—	111	—	111
Issuance of common stock for vested restricted stock units	105,000	—	—	—	—	—	—
Net loss	—	—	—	—	—	(7,528)	(7,528)
Balance as of June 30, 2022	11,556,493	\$ 1	6,000,000	\$ 1	\$ 82,573	\$ (47,780)	\$ 34,795

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

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Statements of Cash Flows
(Dollars in thousands except for share and per share amounts)

	Six-Month Periods Ended	
	June 30,	
	2023	2022
Cash flows from operating activities		
Net loss	\$ (18,499)	\$ (8,906)
Adjustments to reconcile net loss to net cash used in operating activities:		
Bad debt expense (recovery)	574	(45)
Non-cash interest expense	176	418
Amortization of debt discount	296	30
Amortization of acquired intangible assets	2,138	2,034
Amortization of operating lease right-of-use assets	43	44
Share-based compensation	1,519	1,547
Loss on impairment of intangible assets	3,143	—
Changes in operating assets and liabilities:		
Accounts receivable	10,897	(5,514)
Inventory	1,993	(150)
Prepaid expenses and other current assets	1,513	1,403
Other assets	—	40
Accounts payable	(4,797)	10,523
Due to related party	190	(284)
Accrued expenses	3,941	(3,588)
Accrued interest	(77)	77
Income tax payable	—	4
Lease liabilities	(37)	(49)
Net cash provided by (used in) operating activities	3,013	(2,416)
Cash flows from investing activities		
Acquired intangible assets	(5,000)	(20,000)
Net cash used in investing activities	(5,000)	(20,000)
Cash flows from financing activities		
Proceeds from exercise of stock options	3	111
Payment of license installment note payable	—	(2,000)
Payment of debt issuance costs associated with convertible preferred shares	—	(214)
Proceeds from line of credit	28,000	—
Repayments of line of credit	(30,948)	(812)
Proceeds from EWB term-loan, net of discount	—	14,763
Repayment of EWB term-loan	(10,000)	—
Payment of issuance costs associated with EWB term-loan modification	(91)	—
Offering costs for the issuance of common stock - initial public offering	—	(371)
Net cash (used in) provided by financing activities	(13,036)	11,477
Net change in cash and restricted cash	(15,023)	(10,939)
Cash and restricted cash at the beginning of the period	32,003	49,081
Cash and restricted cash at the end of the period	\$ 16,980	\$ 38,142
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 1,011	\$ 377
Cash paid for income taxes	\$ 85	\$ —
Supplemental disclosure of non-cash financing and investing activities:		
Deferred payment for asset acquisition	\$ —	\$ 4,740

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

JOURNEY MEDICAL CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

NOTE 1. ORGANIZATION AND PLAN OF BUSINESS OPERATIONS

Journey Medical Corporation (“Journey” or the “Company”) was formed on July 18, 2014. The Company is a commercial-stage pharmaceutical company that primarily focuses on the selling and marketing of FDA-approved prescription pharmaceutical products for the treatment of dermatological conditions. The Company’s current product portfolio includes eight branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. The Company acquires rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through its field sales force.

As of June 30, 2023 and December 31, 2022, the Company was a majority-owned subsidiary of Fortress Biotech, Inc. (“Fortress” or “Parent”).

Liquidity and Capital Resources

At June 30, 2023, the Company had \$8.2 million in cash and cash equivalents as compared to \$32.0 million of cash and cash equivalents at December 31, 2022. Additionally at June 30, 2023, the Company has \$8.75 million of restricted cash.

In July 2023, the Company voluntarily repaid the entire \$10.0 million outstanding term loan. The repayment satisfied all of the Company’s outstanding debt obligations under the EWB Facility. The Company therefore has no further obligations to EWB. At June 30, 2023, the Company was party to a Loan and Security Agreement, dated March 31, 2021 (as amended, the “EWB Facility”), with East West Bank (“EWB”). On January 12, 2022, the Company entered into an amendment of the loan and security agreement with EWB that increased the borrowing capacity of the Company’s revolving line of credit up to \$10.0 million and added a term loan not to exceed \$20.0 million which were to mature on January 12, 2026. In January 2022 and August 2022, the Company borrowed \$15.0 million and \$5.0 million, respectively, against the term loan. On May 16, 2023, the Company entered into an amendment to the EWB Facility (the “2023 Amendment”) that effected several changes to the EWB Facility whereby the Company paid down \$10.0 million of the term loan upon the closing of the 2023 Amendment. The term loan previously contained an interest-only payment period through January 12, 2024, after which the outstanding balance of the term loan was to have been payable in equal monthly installments of principal, plus all accrued interest, through the term loan maturity date. The 2023 Amendment revised the maturity date of the term loan from January 12, 2026 to July 1, 2024 and provided that the Company was no longer required to make monthly installments of principal of the term loan, and instead, was required to make interest-only payments until the maturity date, at which time all principal and all accrued interest would be due. The Company was permitted to prepay all or any part of the term loan without penalty or premium, but could not re-borrow any amount once repaid. The 2023 Amendment removed the revolving line of credit from the EWB Facility effective as of the date of the 2023 Amendment. In May 2023, the Company paid the remaining balance on its revolving line of credit of \$3.0 million. Under the 2023 Amendment, the Company was required to maintain a minimum required cash balance of \$8.75 million in deposit accounts with EWB.

On December 30, 2022, the Company filed a shelf registration statement on Form S-3 (File No. 333-269079), which was declared effective by the Securities and Exchange Commission (“SEC”) on January 26, 2023. This shelf registration statement covers the offering, issuance, and sale by the Company of up to an aggregate of \$150.0 million of the Company’s common stock, preferred stock, debt securities, warrants, and units (the “2022 Shelf”). At June 30, 2023, \$150.0 million remains available under the 2022 Shelf. In connection with the 2022 shelf, the Company entered into an At Market Issuance Sales Agreement (the “Sales Agreement”) with B. Riley Securities, Inc. (“B. Riley”), relating to shares of the Company’s common stock. In accordance with the terms of the Sales Agreement, the Company may offer and sell up to 4,900,000 shares of its common stock, par value \$0.0001 per share, from time to time through or to B. Riley acting as the Company’s agent or principal.

As a result of increased losses in the latter part of 2022, during the last quarter of 2022, the Company implemented a cost reduction initiative designed to improve operational efficiencies, optimize expenses and reduce overall costs. The initiative is intended to reduce selling, general, and administrative expenses to better align costs with revenues being generated. In connection with the cost reduction initiative, during the six-month period ended June 30, 2023, the Company executed a headcount reduction to its salesforce and implemented marketing and other cost cuts. As a result of the headcount reduction, the Company recorded a severance obligation of approximately \$0.7 million, of which \$133,000 remains to be paid at June 30, 2023.

[Table of Contents](#)

The Company may seek a new borrowing relationship to provide additional working capital, and/or may seek to raise capital through additional debt or equity financing. The Company cannot make any assurances that such additional financing will be available and, if available, the terms may negatively impact the Company's business and operations. As such, substantial doubt exists about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that may be necessary if the Company is unable to continue as a going concern.

NOTE 2. BASIS OF PRESENTATION

Basis of Presentation and Principles of Consolidation

The accompanying unaudited interim condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the balances and results for the periods presented. Certain information and footnote disclosures normally included in the Company's annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited interim condensed consolidated financial statement results are not necessarily indicative of results to be expected for the full fiscal year or any future period. The Company's unaudited interim condensed consolidated financial statements include the accounts of the Company and the accounts of the Company's wholly-owned subsidiary, JG Pharma, Inc. All intercompany balances and transactions have been eliminated.

Emerging Growth Company

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB"), or other standard setting bodies, and adopted by the Company as of the specified effective date. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not have a material impact on the Company's unaudited interim condensed consolidated financial statements upon adoption. Under the Jumpstart Our Business Startups Act of 2012, as amended, the Company meets the definition of an emerging growth company and elected the extended transition period for complying with new or revised accounting standards, which delays the adoption of these accounting standards until they would apply to private companies.

Use of Estimates

The preparation of unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates made by management include provisions for coupons, chargebacks, wholesaler fees, prompt-pay discounts, specialty pharmacy discounts, managed care rebates, product returns, government rebates and other allowances customary to the pharmaceutical industry. Significant estimates made by management also include inventory realization, valuation of intangible assets, useful lives of amortizable intangible assets and share-based compensation. Actual results may differ materially and adversely from these estimates. To the extent there are material differences between the estimates and actual results, the Company's future results of operations will be affected.

Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one segment, which reflects products for the treatment of dermatological conditions.

NOTE 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company's significant accounting policies are described in Note 2 of the Notes to the Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022 (the "2022 Form 10-K").

Recently Issued Accounting Pronouncements

During the three-month period ended June 30, 2023, there were no new accounting pronouncements or updates to recently issued accounting pronouncements disclosed in the 2022 Form 10-K that affect the Company's present or future results of operations, overall financial condition, liquidity, or disclosures.

NOTE 4. INVENTORY

The Company's inventory consists of the following for the periods ended:

<i>(\$'s in thousands)</i>	June 30, 2023	December 31, 2022
Raw materials	\$ 5,261	\$ 6,454
Work-in-process	993	395
Finished goods	6,880	7,739
Inventory at cost	13,134	14,588
Inventory reserves	(968)	(429)
Total inventories	\$ 12,166	\$ 14,159

NOTE 5. ASSET ACQUISITION

In January 2022, the Company entered into an agreement with VYNE Therapeutics, Inc. ("VYNE") to acquire two United States Food and Drug Administration ("FDA") Approved Topical Minocycline Products, Amzeeq[®] (minocycline) topical foam, 4%, and Zilxi[®] (minocycline) topical foam, 1.5%, and a Molecule Stabilizing Technology[™] proprietary platform from VYNE for an upfront payment of \$20.0 million and an additional \$5.0 million payment on the one year anniversary of the closing (the "VYNE Product Acquisition Agreement"). This expanded the Company's product portfolio to eight marketed branded dermatology products. The Company also acquired certain associated inventory.

The VYNE Product Acquisition Agreement also provides for contingent net sales milestone payments. In the first calendar year in which annual sales reach each of \$100 million, \$200 million, \$300 million, \$400 million and \$500 million, a one-time payment of \$10 million, \$20 million, \$30 million, \$40 million and \$50 million, respectively, will be paid in that year only, per product, totaling up to \$450 million. In addition, the Company will pay VYNE 10% of any upfront payment received by the Company from a licensee or sublicensee of the products in any territory outside of the United States, subject to exceptions for certain jurisdictions as detailed in the VYNE Product Acquisition Agreement.

The following table summarizes the aggregate consideration transferred for the assets acquired by the Company in connection with the VYNE Product Acquisition Agreement:

<i>(\$'s in thousands)</i>	Aggregate Consideration Transferred
Consideration transferred to VYNE at closing	\$ 20,000
Fair value of deferred cash payment due January 2023	4,740
Transaction costs	223
Total consideration transferred at closing	\$ 24,963

The fair value of the deferred cash payment was accreted to the \$5.0 million January 2023 cash payment over a one-year period through interest expense. The Company made the \$5.0 million deferred cash payment in January 2023.

[Table of Contents](#)

The following table summarizes the assets acquired in the VYNE Product Acquisition Agreement:

<i>(\$ in thousands)</i>	Assets Recognized
Inventory	6,041
Identifiable intangibles:	
Amzeeq intangible	15,162
Zilxi intangible	3,760
Fair value of net identifiable assets acquired	<u>\$ 24,963</u>

The intangible assets were valued using an income approach, while the inventory was valued using a final sales value less cost to dispose approach.

NOTE 6. INTANGIBLE ASSETS

The Company's finite-lived intangible assets consist of acquired intangible assets. During the six months ended June 30, 2023, the Company experienced lower net product revenues and gross profit levels for its Ximino products. Based on these results, the Company revised the financial outlook and plans for its Ximino products. The Company assessed the revised forecast for Ximino and determined that this constituted a triggering event and the results of the analysis indicated the carrying amount was not expected to be recovered. The Company recorded an intangible asset impairment charge of \$3.1 million during the three months ended June 30, 2023. This non-cash charge was recorded to loss on impairment of intangible assets on the unaudited condensed consolidated statements of operations.

The Company's intangible assets as of June 30, 2023 and December 31, 2022 are summarized as follows:

<i>(\$ in thousands)</i>	Estimated Useful Lives (Years)	June 30, 2023	December 31, 2022
Intangible assets - product licenses	3-9	\$ 37,925	\$ 37,925
Accumulated amortization		(12,866)	(10,728)
Accumulated impairment loss		(3,143)	—
Total intangible assets		<u>\$ 21,916</u>	<u>\$ 27,197</u>

The Company's amortization expense for the three-month periods ended June 30, 2023 and 2022 was \$1.1 million and \$1.0 million, respectively. The Company's amortization expense for the six-month periods ended June 30, 2023 and 2022 was \$2.1 million and \$2.0 million, respectively. Amortization expense is recorded as a component of cost of goods sold in the Company's unaudited condensed consolidated statements of operations.

Future amortization of the Company's intangible assets is as follows:

<i>(\$ in thousands)</i>	Total Amortization
Remainder of 2023	\$ 1,627
December 31, 2024	3,258
December 31, 2025	3,258
December 31, 2026	2,470
December 31, 2027	1,775
Thereafter	5,586
Subtotal	17,974
Asset not yet placed in service	3,942
Total	<u>\$ 21,916</u>

NOTE 7. LICENSES ACQUIRED

DFD-29

In June 2021, the Company entered a license, collaboration, and assignment agreement (the “DFD-29 Agreement”) to obtain global rights for the development and commercialization of a late-stage development modified release oral minocycline for the treatment of rosacea (“DFD-29”) with Dr. Reddy’s Laboratories, Ltd (“DRL”); provided, that DRL retained certain rights to the program in select markets including Brazil, Russia, India and China. Based on the development and commercialization of DFD-29, additional contingent regulatory and commercial milestone payments totaling up to \$158.0 million may also become payable by the Company. The Company is required to pay royalties ranging from approximately ten percent to fifteen percent on net sales of the DFD-29 product, subject to certain reductions. Additionally, the Company was required to fund and oversee the Phase 3 clinical trials beginning upon the license of DFD-29 in 2021. The Phase 3 clinical trials substantially concluded in July 2023 upon the Company’s receipt of positive topline results from the trials.

Qbrexza

In March 2021, the Company acquired global rights to Qbrexza (glycopyrronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. The Company paid an upfront fee of \$12.5 million to Dermira, Inc., a subsidiary of Eli Lilly and Company (“Dermira”). In addition, the Company is obligated to pay Dermira up to \$144 million in the aggregate upon the achievement of certain net sales milestones. The royalty structure for the agreement is tiered with royalties for the first two years ranging from approximately 40% to 30%. Thereafter for a period of eight years, royalties are approximately 12.0% to 19.0%. Royalty amounts are subject to a 50% diminution in the event of loss of exclusivity due to the introduction of an authorized generic.

Accutane

In July 2020, the Company entered into an exclusive license and supply agreement for Accutane (the “Accutane Agreement”) with DRL. Pursuant to the Accutane Agreement, the Company agreed to pay \$5.0 million, comprised of an upfront payment of \$1.0 million paid upon execution, with additional milestone payments totaling \$4.0 million. To date, the Company has paid \$3.0 million of the additional milestone payments. Three additional milestone payments totaling \$17.0 million are contingent upon the achievement of certain net sales milestones. The Company is required to pay royalties in an amount equal to a low-double digit percentage of net sales. The term of the Accutane Agreement is ten years and renewable upon mutual agreement. Each party may terminate the Accutane Agreement for an uncured material breach by the other party or for certain bankruptcy or insolvency related events. The Company may also terminate the Accutane Agreement without cause upon 180 days written notice to DRL.

NOTE 8. FAIR VALUE MEASUREMENTS

Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability.

The accounting guidance requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs other than Level 1 prices for similar assets or liabilities that are directly or indirectly observable in the marketplace.

Level 3: Unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

[Table of Contents](#)

Certain of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as accounts payable, accrued expenses and other current liabilities.

Financial assets and liabilities measured at fair value on a recurring basis are summarized below:

<i>(\$'s in thousands)</i>	June 30, 2023			Total
	Level 1	Level 2	Level 3	
Assets				
Cash and cash equivalents	\$ 8,230	\$ —	\$ —	\$ 8,230
Restricted cash	8,750	—	—	8,750
Total	<u>\$ 16,980</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 16,980</u>

<i>(\$'s in thousands)</i>	December 31, 2022			Total
	Level 1	Level 2	Level 3	
Assets				
Cash and cash equivalents	\$ 32,003	\$ —	\$ —	\$ 32,003
Total	<u>\$ 32,003</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 32,003</u>

The Company did not carry any level 2 or level 3 assets or liabilities at June 30, 2023 or December 31, 2022. No transfers occurred between level 1, level 2, and level 3 instruments during the six-month periods ended June 30, 2023 and 2022.

NOTE 9. RELATED PARTY AGREEMENTS

Shared Services Agreement with Fortress

On November 12, 2021, the Company and Fortress entered into an arrangement to share the cost of certain legal, finance, regulatory, and research and development employees (the "Shared Services Agreement"). Fortress' Executive Chairman and Chief Executive Officer is the Executive Chairman of the Company. Under the terms of the Shared Services Agreement, the Company will reimburse Fortress for the salary and benefit costs associated with these employees based upon actual hours worked on Journey-related projects following the completion of the Company's initial public offering, which occurred in November 2021. In addition, the Company reimburses Fortress for various payroll-related costs and selling, general and administrative costs incurred by Fortress for the benefit of the Company. For the three-month periods ended June 30, 2023 and 2022, Fortress employees have provided services to the Company, and the Company recorded related expenses of approximately \$21,000 and \$12,000, respectively. For the six-month periods ended June 30, 2023 and 2022, Fortress employees have provided services to the Company, and the Company recorded related expenses of approximately \$36,000 and \$0.1 million, respectively. At June 30, 2023 and December 31, 2022, the Company's outstanding balance under the Shared Services Agreement was \$0.6 million and \$0.4 million, respectively, recorded as due to related party on the condensed consolidated balance sheets.

Fortress Income Tax

At June 30, 2023, 55.35% of all classes of the Company's outstanding Common Stock was owned by Fortress. Prior to our initial public offering of securities in 2021, the Company had been filing consolidated federal tax returns and consolidated or combined state tax returns in multiple jurisdictions with Fortress. The Company may still be required to file combined tax returns in certain "combined filing states". These jurisdictions generally require corporations engaged in unitary business and meet the capital stock requirement of fifty percent to file a combined state tax return.

Additionally, see Note 17 below for a discussion of income taxes.

NOTE 10. ACCRUED EXPENSES

Accrued expenses consisted of the following:

<i>(\$'s in thousands)</i>	June 30, 2023	December 31, 2022
Accrued expenses:		
Accrued coupons and rebates	\$ 12,509	\$ 7,604
Return reserve	4,545	3,689
Accrued compensation	2,064	2,586
Accrued royalties payable	2,199	2,627
Accrued severance	133	-
Accrued legal, accounting and tax	284	334
Accrued research and development	111	1,404
Accrued inventory	112	112
Accrued iPledge program	621	447
Other	751	585
Total accrued expenses	\$ 23,329	\$ 19,388

During the six-month period ended June 30, 2023, the Company executed a headcount reduction to its salesforce and implemented marketing and other cost cuts. As a result of the headcount reduction, the Company recorded a severance obligation of approximately \$0.7 million, of which \$133,000 remains to be paid at June 30, 2023. The accrued severance obligation is included within accrued compensation in the above table.

NOTE 11. INSTALLMENT PAYMENTS — LICENSES

The following tables show the details of the Company's installment payments – licenses for the periods presented:

<i>(\$'s in thousands)</i>	June 30, 2023		
	Short-Term	Long-Term	Total
Installment payments - licenses	\$ 2,500	\$ 1,500	\$ 4,000
Less: imputed interest	(167)	(10)	(177)
Sub-total installment payments - licenses	<u>\$ 2,333</u>	<u>\$ 1,490</u>	<u>\$ 3,823</u>

<i>(\$'s in thousands)</i>	December 31, 2022		
	Short-Term	Long-Term	Total
Installment payments - licenses	\$ 2,500	\$ 1,500	\$ 4,000
Less: imputed interest	(256)	(88)	(344)
Sub-total installment payments - licenses	<u>\$ 2,244</u>	<u>\$ 1,412</u>	<u>\$ 3,656</u>

NOTE 12. OPERATING LEASE OBLIGATIONS

The Company leases 3,681 square feet of office space in Scottsdale, Arizona. In September 2022, the Company amended the lease to extend the lease term for an additional 25 months at an annual rate of approximately \$0.1 million. The amended lease will expire on January 31, 2025.

The Company recorded rent expense as follows:

<i>(\$'s in thousands)</i>	Three-Month Periods Ended June 30,		Six-Month Periods Ended June 30,	
	2023	2022	2023	2022
Operating lease cost	\$ 24	\$ 27	\$ 48	\$ 53
Variable lease cost	1	1	2	2
Total lease cost	<u>\$ 25</u>	<u>\$ 28</u>	<u>\$ 50</u>	<u>\$ 55</u>

[Table of Contents](#)

The following table summarizes quantitative information about the Company's operating leases:

<i>(\$ in thousands)</i>	Three-Month Periods Ended June 30,		Six-Month Periods Ended June 30,	
	2023	2022	2023	2022
Cash paid for amounts included in the measurement of lease liabilities	\$ 25	\$ 25	\$ 42	\$ 50
Weighted-average remaining lease term - operating leases	1.6	0.5	1.6	0.5
Weighted-average discount rate - operating leases	6.25 %	4.0 %	6.25 %	4.0 %

As of June 30, 2023, future minimum lease payments under lease agreements associated with the Company's operations were as follows:

<i>\$ in thousands</i>	
Remainder of 2023	\$ 50
2024	102
2025	9
Total lease payments	161
Less: present value discount	(7)
Total operating lease liabilities	\$ 154

NOTE 13. DEBT AND INTEREST EXPENSE

The Company's debt obligations at June 30, 2023 and December 31, 2022 were as follows:

June 30, 2023			
<i>(\$ in thousands)</i>	Principal Balance	Unamortized Discount & Fees	Net Carry Amount
EWB Term Loan (Short-term)	\$ 10,000	\$ 58	\$ 9,942
Total Debt & Obligations	\$ 10,000	\$ 58	\$ 9,942

December 31, 2022			
<i>(\$ in thousands)</i>	Principal Balance	Unamortized Discount & Fees	Net Carry Amount
Deferred cash payment	\$ 5,000	\$ 9	\$ 4,991
EWB Revolving LOC	2,948	—	2,948
Total Short-Term Debt	\$ 7,948	\$ 9	\$ 7,939
EWB Term Loan (Long-term)	\$ 20,000	\$ 174	\$ 19,826
Total Debt & Obligations	\$ 27,948	\$ 183	\$ 27,765

East West Bank Line of Credit and Long-Term Debt

In July 2023 the Company voluntarily repaid the entire \$10.0 million outstanding term loan principal balance. The repayment satisfied all of the Company's outstanding debt obligations under the EWB Facility. The Company has no further obligations to EWB.

On May 16, 2023, the Company entered into the 2023 Amendment that effected several changes to the EWB facility. Under the 2023 Amendment, the Company paid down \$10.0 million of the term loan upon the closing of the 2023 Amendment. The term loan previously contained an interest-only payment period through January 12, 2024, after which the outstanding balance of the term loan was to have been payable in equal monthly installments of principal, plus all accrued interest, through the term loan maturity date. The 2023 Amendment revised the maturity date of the term loan from January 12, 2026 to July 1, 2024 and provided that the Company was no longer required to make monthly installments of principal of the term loan, and instead, was required to make interest-only payments until the maturity date, at which time all principal and all accrued interest would be due. The Company was permitted to prepay all or any part of the term loan without penalty or premium, but could not re-borrow any amount once repaid. The 2023 Amendment removed

[Table of Contents](#)

the revolving line of credit from the EWB Facility effective as of the date of the 2023 Amendment. Under the 2023 Amendment, the Company was required to maintain a minimum required cash balance of \$8.75 million in deposit accounts with EWB.

Interest expense and financing fees

Interest expense consisted of the following:

<i>(\$ in thousands)</i>	<u>Three-Month Periods Ended June 30,</u>		<u>Six-Month Periods Ended June 30,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
Interest payments on EWB term loan and LOC	\$ 399	\$ 216	\$ 932	\$ 377
Amortization/Accretion	272	87	297	167
Imputed interest on acquired intangible assets	85	151	177	299
Total Interest Expense and Financing Fees	\$ 756	\$ 454	\$ 1,406	\$ 843

NOTE 14. COMMITMENTS AND CONTINGENCIES

License Agreements

The Company has undertaken to make contingent milestone payments to the licensors of its portfolio of drug products and candidates. In addition, the Company is required to pay royalties to such licensors based on a percentage of net sales of each drug candidate following regulatory marketing approval. For additional information on future milestone payments and royalties, see Note 7.

NOTE 15. SHARE-BASED COMPENSATION

In 2015, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical 2015 Stock Plan (the "Plan") authorizing the Company to grant up to 4,642,857 shares of Common Stock to eligible employees, directors, and consultants in the form of restricted stock, restricted stock units ("RSUs"), stock options and other types of grants. The amount, terms, and exercisability provisions of grants are determined by the Board of Directors. At the Company's 2022 Annual Meeting of Stockholders, held on June 21, 2022, the Company's stockholders approved, among other matters, an amendment to the Plan to increase the number of shares of Common Stock issuable under the Plan by 3,000,000 to 7,642,857. As of June 30, 2023, 1,322,932 shares were available for issuance under the Plan.

In 2023, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical Corporation 2023 Employee Stock Purchase Plan (the "2023 ESPP"). The Company initially reserved 300,000 shares of common stock for future issuance under the 2023 ESPP. The Company had not initiated any offering periods under the 2023 ESPP as of June 30, 2023. As such, there is no compensation expense associated with the 2023 ESPP.

The following table summarizes the components of share-based compensation expense in the consolidated statements of operations:

<i>(\$ in thousands)</i>	<u>Three-Month Periods Ended June 30,</u>		<u>Six-Month Periods Ended June 30,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
Research and development	\$ 30	\$ —	\$ 64	\$ —
Selling, general and administrative	843	774	1,455	1,547
Total non-cash compensation expense related to share-based compensation included in operating expense	\$ 873	\$ 774	\$ 1,519	\$ 1,547

Stock Options

The following table summarizes the Company's stock option activities:

	Number of Shares	Weighted average exercise price	Aggregate intrinsic value	Weighted average remaining contractual life (years)
Outstanding options at December 31, 2022	2,960,000	\$ 1.76	\$ 2,217,815	5.65
Granted	390,684	1.56	—	—
Exercised	(5,000)	0.68	—	—
Forfeited	(273,629)	3.32	—	—
Expired	(14,200)	3.65	—	—
Outstanding options at June 30, 2023	3,057,855	\$ 1.59	\$ 1,605,537	5.34
Options vested and exercisable at June 30, 2023	1,975,000	\$ 0.86	\$ 1,583,625	3.18

For the three-month periods ended June 30, 2023 and 2022 approximately \$0.2 million and \$4,000, respectively, of stock option compensation expense was charged against operations. For the six-month periods ended June 30, 2023 and 2022 approximately \$0.3 million and \$11,000, respectively, of stock option compensation expense was charged against operations. For the three-month periods ended June 30, 2023 and 2022, the Company issued 5,000 shares and 133,149 shares, respectively, of common stock upon the exercise of outstanding stock options and received proceeds \$3,400 and \$111,055, respectively. At June 30, 2023, the Company had unrecognized stock-based compensation expense related to all unvested options of \$1.5 million, which the Company expects to recognize over a weighted-average period of approximately 2.2 years.

The aggregate intrinsic value in the previous table reflects the total pre-tax intrinsic value (the difference between the Company's closing stock price on the last trading day of the period and the exercise price of the options, multiplied by the number of in-the-money stock options) that would have been received by the option holders had all option holders exercised their options on June 30, 2023. The intrinsic value of the Company's stock options changes based on the closing price of the Company's Common Stock.

Restricted Stock Units

The following table summarizes the activity related to the Company's RSUs for the six-month period ended June 30, 2023:

	Number of units	Weighted average grant date Fair value
Unvested balance at December 31, 2022	2,261,048	\$ 4.05
Granted	10,000	1.79
Vested	(363,190)	4.17
Forfeited	(289,167)	4.24
Unvested balance at June 30, 2023	1,618,691	\$ 3.98

For the three-month periods ended June 30, 2023 and 2022, approximately \$0.7 million of stock compensation expense related to RSUs was charged against operations in each respective period. For the six-month periods ended June 30, 2023 and 2022, approximately \$1.2 million and \$1.5 million, respectively, of stock compensation expense related to RSUs was charged against operations. For the three-month periods ended June 30, 2023 and 2022 the Company issued 294,528 and 105,000 shares of common stock, respectively, upon vesting of RSU's amounting to \$1.2 million and \$0.4 million, respectively, in total aggregate fair market value. For the six-month periods ended June 30, 2023 and 2022, the Company issued 363,190 and 107,000 shares upon vesting of RSU's amounting to \$1.5 million and \$0.4 million, respectively, in total aggregate fair market value. At June 30, 2023, 1,618,691 RSUs remained unvested and there was approximately \$2.5 million of unrecognized compensation cost related to restricted stock which the Company expects to recognize over a weighted-average period of approximately 1.8 years.

NOTE 16. REVENUES FROM CONTRACTS WITH CUSTOMERS

Disaggregation of Net Revenues

The Company's net product revenues are summarized as follows:

<i>(\$ in thousands)</i>	Three-Month Periods Ended June 30,		Six-Month Periods Ended June 30,	
	2023	2022	2023	2022
Qbrexza®	\$ 8,079	\$ 6,111	\$ 12,173	\$ 13,487
Accutane®	5,579	5,200	10,227	10,107
Amzeeq®	1,374	1,265	2,568	4,731
Zilxi®	572	555	886	1,297
Targadox®	664	2,756	1,457	5,390
Exelderm®	538	1,313	1,049	2,017
Ximino®	155	1,035	766	2,002
Total product revenues	\$ 16,961	\$ 18,235	\$ 29,126	\$ 39,031

The above table includes the authorized generic product within the line items for Targadox®, Ximino® and Exelderm®.

Significant Customers

For the three and six-month periods ended June 30, 2023 and 2022, there were no customers that accounted for more than 10% of the Company's total gross product revenue.

At June 30, 2023, two of the Company's customers accounted for more than 10% of its total accounts receivable balance at 22.0% and 17.3%. At December 31, 2022, two of the Company's customers accounted for more than 10% of its total accounts receivable balance at 16.7% and 10.4%.

Other Revenue

<i>(\$ in thousands)</i>	Three-Month Periods Ended June 30,		Six-Month Periods Ended June 30,	
	2023	2022	2023	2022
Other revenue	\$ 211	\$ 56	\$ 259	\$ 2,556
Total other revenue	\$ 211	\$ 56	\$ 259	\$ 2,556

Other revenue reflects royalties on sales of Rapifort® Wipes 2.5% in Japan, from Maruho Co., LTD. ("Maruho"), the Company's exclusive out-licensing partner in Japan. Other revenue for the six-month period ended June 30, 2022 also reflects a net \$2.5 million milestone payment from Maruho. In January 2022, Maruho received manufacturing and marketing approval in Japan for Rapifort® Wipes 2.5% (Japanese equivalent to U.S. FDA approved QBREXZA®), for the treatment of primary axillary hyperhidrosis, triggering the net payment.

NOTE 17. INCOME TAXES

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered the Company's history of book and tax income and losses incurred since inception, and the other positive and negative evidence, and has concluded that it is more likely than not that the Company will not realize the benefits of the net deferred tax assets as of June 30, 2023.

As of June 30, 2023, the Company had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance.

NOTE 18. NET LOSS PER COMMON SHARE

The Company accounts for and discloses net earnings (loss) per share using the treasury stock method. Net earnings (loss) per share, or basic earnings (loss) per share, is computed by dividing net earnings (loss) by the weighted-average number of shares of common stock outstanding. Net earnings (loss) per share assuming dilutions, or diluted earnings (loss) per share, is computed by reflecting the potential dilution from the exercise of in-the-money stock options, and non-vested restricted stock units.

The Company's basic and diluted weighted-average number of shares of common stock outstanding for the three and six-month periods ended June 30, 2023 and 2022 were as follows:

	<u>Three-Month Periods Ended June 30,</u>		<u>Six-Month Periods Ended June 30,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
Basic and diluted	18,005,055	17,455,894	17,906,671	17,386,538
Potentially dilutive securities:				
Unvested restricted stock units	1,618,691	1,319,030	1,618,691	1,319,030
Stock options	1,010,291	1,626,751	1,077,315	1,703,710
Total potentially dilutive securities	2,628,982	2,945,781	2,696,006	3,022,740

The Company's potentially dilutive securities, including unvested restricted stock and options have been excluded from the computation of diluted loss per share for the three and six-month periods ended June 30, 2023, and 2022, as the effect would be to reduce the loss per share. Therefore, the weighted average Common Stock outstanding used to calculate both basic and diluted income loss per share is the same for the three and six-month periods ended June 30, 2023 and 2022.

NOTE 19. SUBSEQUENT EVENT

In July 2023 the Company voluntarily repaid the entire \$10.0 million outstanding EWB term loan. The repayment satisfied all of the Company's outstanding debt obligations under the EWB Facility. The Company therefore has no further obligations to EWB.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations Forward-Looking Statements

Certain matters discussed in this report may constitute forward-looking statements for purposes of the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from the future results, performance or achievements expressed or implied by such forward-looking statements. The words "anticipate," "believe," "estimate," "may," "expect," "will," "could," "project," "should," "intend" and similar expressions are generally intended to identify forward-looking statements. Our actual results may differ materially from the results anticipated in or implied by these forward-looking statements due to a variety of factors, including, without limitation:

- *the fact that our products and product candidates are subject to time and cost intensive regulation and clinical testing and as a result, may never be successfully developed or commercialized;*
- *a substantial portion of our sales derive from products that may become subject to third-party generic competition, the introduction of new competitor products, or an increase in market share of existing competitor products, any of which could have a significant adverse impact on our operating income;*
- *we operate in a heavily regulated industry, and we cannot predict the impact that any future legislation or administrative or executive action may have on our operations;*
- *our revenue is dependent mainly upon sales of our dermatology products and any setback relating to the sale of such products could impair our operating results;*
- *competition could limit our products' commercial opportunity and profitability, including competition from manufacturers of generic versions of our products;*
- *the risk that our products do not achieve broad market acceptance, including by government and third-party payors;*
- *our reliance third parties for several aspects of our operations;*
- *our dependence on our ability to identify, develop, and acquire or in-license products and integrate them into our operations, at which we may be unsuccessful;*
- *the dependence of the success of our business, including our ability to finance our company and generate additional revenue, on the successful development and regulatory approval of the DFD-29 product candidate and any future product candidates that we may develop, in-license or acquire;*
- *clinical drug development is very expensive, time consuming, and uncertain and our clinical trials may fail to adequately demonstrate the safety and efficacy of our current or any future product candidates;*
- *our competitors could develop and commercialize products similar or identical to ours;*
- *risks related to the protection of our intellectual property and our potential inability to maintain sufficient patent protection for our technology and products;*
- *our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or our third parties' cybersecurity;*
- *the substantial doubt expressed about our ability to continue as a going concern;*
- *the effects of major public health issues, epidemics or pandemics on our product revenues and any future clinical trials;*

[Table of Contents](#)

- *our potential need to raise additional capital;*
- *Fortress controls a voting majority of our common stock, which could be detrimental to our other shareholders;*
- *and the risks described in under the section titled “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2022 (the “2022 Form 10-K”).*

The forward-looking statements contained in this report reflect our views and assumptions as of the effective date of this report. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. Except as required by law, we assume no responsibility for updating any forward-looking statements.

We qualify all of our forward-looking statements by these cautionary statements. In addition, with respect to all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

Overview

We are a commercial-stage pharmaceutical company founded in October 2014 that primarily focuses on the selling and marketing of FDA-approved prescription pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes eight branded and three authorized generic prescription drugs for dermatological conditions that are actively marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life and physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our field sales force.

Critical Accounting Policies and Uses of Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which we have prepared in accordance with accounting principles generally accepted in the United States. Applying these principles requires our judgment in determining the appropriateness of acceptable accounting principles and methods of application in diverse and complex economic activities. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of revenues, expenses, assets and liabilities, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and other assumptions that we believe are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

For a discussion of our critical accounting estimates, see the section of the 2022 Form 10-K titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies and Use of Estimates.” There were no material changes in our critical accounting estimates or accounting policies from December 31, 2022.

Accounting Pronouncements

During the six-month period ended June 30, 2023, there were no new accounting pronouncements or updates to recently issued accounting pronouncements disclosed in the 2022 Form 10-K that are expected to materially affect the Company’s present or future financial statements.

Emerging Growth Company and Smaller Reporting Company Status

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (“JOBS Act”). Under the JOBS Act, emerging growth companies can delay the adoption of new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. Other exemptions and reduced reporting requirements under the JOBS Act for emerging growth companies include presentation of only two years of audited financial statements in our annual reports on Form 10-K, an exemption from the requirement to provide an auditor’s report on internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, as amended, an exemption from any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation and less extensive disclosure about our

[Table of Contents](#)

executive compensation arrangements. We have elected to use the extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that (i) we are no longer an emerging growth company or (ii) we affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act.

We are also a “smaller reporting company,” meaning that either (i) the market value of our shares held by non-affiliates is less than \$250 million or (ii) the market value of our shares held by non-affiliates is less than \$700 million and our annual revenue was less than \$100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company if either (i) the market value of our shares held by non-affiliates is less than \$250 million or (ii) our annual revenue was less than \$100 million during the most recently completed fiscal year and the market value of our shares held by non-affiliates is less than \$700 million. As a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K, have reduced disclosure obligations regarding executive compensation, and smaller reporting companies are permitted to delay adoption of certain recent accounting pronouncements discussed in Note 2 to our consolidated financial statements in this report on Form 10-Q.

Results of Operations

The following table summarizes our results of operations for the three-month periods ended June 30, 2023 and 2022:

Comparison of the Three-Month Periods Ended June 30, 2023 and 2022

<i>(\$ in thousands, except per share data)</i>	Three-Month Periods Ended June 30,		Change	
	2023	2022	\$	%
Revenue:				
Product revenue, net	\$ 16,961	\$ 18,235	\$ (1,274)	-7%
Other revenue	211	56	155	277 %
Total revenue	17,172	18,291	(1,119)	-6%
Operating expenses				
Cost of goods sold - product revenue	7,767	7,633	134	2 %
Research and development	1,774	2,609	(835)	-32%
Selling, general and administrative	12,141	15,191	(3,050)	-20%
Loss on impairment of intangible assets	3,143	—	3,143	100 %
Total operating expenses	24,825	25,433	(608)	-2%
Loss from operations	(7,653)	(7,142)	(511)	7 %
Other expense (income)				
Interest income	(79)	(4)	(75)	1875 %
Interest expense	756	454	302	67 %
Foreign exchange transaction losses	33	—	33	100 %
Total other expense (income)	710	450	260	58 %
Loss before income taxes	(8,363)	(7,592)	(771)	10 %
Income tax benefit	—	(64)	64	-100%
Net Loss	\$ (8,363)	\$ (7,528)	\$ (835)	11 %

[Table of Contents](#)**Revenues**

The following table reflects our net product revenue for the three-month periods ended June 30, 2023 and 2022:

(\$ in thousands)	Three-Month Periods Ended June 30,		Change	
	2023	2022	\$	%
Qbrexza®	\$ 8,079	\$ 6,111	\$ 1,968	32 %
Accutane®	5,579	5,200	379	7 %
Amzeeq®	1,374	1,265	109	9 %
Zilxi®	572	555	17	3 %
Targadox®	664	2,756	(2,092)	-76%
Exelderm®	538	1,313	(775)	-59%
Ximino®	155	1,035	(880)	-85%
Total net product revenue	\$ 16,961	\$ 18,235	\$ (1,274)	-7%

Total net product revenues decreased by \$1.3 million, or 7.0%, to \$17.0 million for the three-month period ended June 30, 2023, from \$18.2 million for the three-month period ended June 30, 2022. The decrease is primarily due to lower unit volumes from our legacy products, Targadox, Ximino and Exelderm, substantially driven by continued generic competition for Targadox. The decrease was offset by an increase in net product revenues from our four core products, Qbrexza, Accutane, Amzeeq and Zilxi due to increased unit volumes as a result of our focused sales and marketing emphasis on these products. Qbrexza, Accutane, Amzeeq and Zilxi, all acquired and launched since 2021, reflect approximately 92%, or \$15.6 million, of our total net product revenue for the three-month period ended June 30, 2023.

Other revenue

(\$ in thousands)	Three-Month Periods Ended June 30,		Change	
	2023	2022	\$	%
Other revenue	\$ 211	\$ 56	\$ 155	277 %
Total other revenue	\$ 211	\$ 56	\$ 155	277 %

Other revenues increased approximately \$155,000, to \$211,000 for the three-month period ended June 30, 2023, from \$56,000 for the three-month period ended June 30, 2022. Other revenue reflects royalties on sales of Rapifort® Wipes 2.5% in Japan for the treatment of primary axillary hyperhidrosis (the Japanese equivalent to U.S. FDA approved Qbrexza®), from Maruho, our exclusive out-licensing partner in Japan. Manufacturing and marketing approval for this product was obtained in February 2022.

Gross-to-Net Sales Accruals

We record gross-to-net sales accruals for chargebacks, distributor service fees, prompt pay discounts, sales returns, coupons, managed care rebates, government rebates, and other allowances customary to the pharmaceutical industry.

[Table of Contents](#)

Gross-to-net sales accruals and the balance in the related allowance accounts for the three-month periods ended June 30, 2023 and 2022, were as follows:

(\$'s in thousands)	Chargebacks and other allowances	Distributor Service Fees	Prompt Pay Discounts	Returns	Coupons	Managed Care Rebates	Gov't Rebates	Total
Balance as of March 31, 2023	\$ 222	\$ 753	\$ 175	\$ 3,371	\$ 2,217	\$ 3,691	\$ 1,168	\$ 11,597
Current provision related to sales in the current period	748	1,512	293	2,082	25,764	5,842	2,678	38,919
Checks/credits issued to third parties	(705)	(1,386)	(276)	(908)	(30,056)	(5,801)	(429)	(39,561)
Reclass coupon vendor deposit to accounts payable	—	—	—	—	6,167	—	—	6,167
Balance as of June 30, 2023	<u>\$ 265</u>	<u>\$ 879</u>	<u>\$ 192</u>	<u>\$ 4,545</u>	<u>\$ 4,092</u>	<u>\$ 3,732</u>	<u>\$ 3,417</u>	<u>\$ 17,122</u>

(\$'s in thousands)	Chargebacks and other allowances	Distributor Service Fees	Prompt Pay Discounts	Returns	Coupons	Managed Care Rebates	Gov't Rebates	Total
Balance as of March 31, 2022	\$ 343	\$ 818	\$ 225	\$ 3,151	\$ 6,660	\$ 2,635	\$ 1,026	\$ 14,858
Current provision related to sales in the current period	574	1,456	274	1,170	30,912	6,543	752	41,681
Checks/credits issued to third parties	(644)	(1,341)	(305)	(1,594)	(35,073)	(5,987)	(560)	(45,504)
Balance as of June 30, 2022	<u>\$ 273</u>	<u>\$ 933</u>	<u>\$ 194</u>	<u>\$ 2,727</u>	<u>\$ 2,499</u>	<u>\$ 3,191</u>	<u>\$ 1,218</u>	<u>\$ 11,035</u>

Our provision for gross-to-net allowances was \$17.1 million at June 30, 2023, compared to \$11.6 million at March 31, 2023. The increase is mainly due to the reclassification of certain coupon deposits to accounts payable as the related coupon accrual for these coupons has decreased while we continue to have accounts payables to the vendor for these processed coupons.

During the second quarter we implemented an additional coupon processing access program for our specialty pharmaceutical customers (direct customers) whereby upon prescription fulfillment and application of a coupon we would provide a credit to the direct customer which is reflected as reduction of the accounts receivable as they will deduct the credit against sales invoices remitted to us. Previously for these customers the coupons were processed and funded by a coupon vendor which we reimbursed for funded coupons. The change in coupon vendor did not impact the classification of the coupon provision in the Company's condensed consolidated statements of operations. We continue to estimate coupon cost at the time of sale.

Cost of Goods Sold

Cost of goods sold increased by \$0.2 million, or 2%, to \$7.8 million for the three-month period ended June 30, 2023, from \$7.6 million for the three-month period ended June 30, 2022. The increase is predominantly a result of increases to our inventory reserves of \$0.5 million primarily related to expired finished goods, raw material inventory, and inventory estimated to be in excess of anticipated usage. Additionally, prescription drug user fee and product license amortization increased by \$0.2 million and \$0.1 million, respectively, from the three-month period ended June 30, 2022. These increases are partially offset by an \$0.8 million decrease in product royalties driven by a decrease in Targadox® royalties as a result of decreased sales from generic competition and Qbrexza royalties resulting from a contractual decrease in the Qbrexza royalty percentage from the prior-year quarter. In addition, the three-month period ended June 30, 2022 included an inventory step-up of \$0.2 million for inventory units sold related to the acquired finished goods for Ameerq® and Zilxi® from Vyne in January 2022.

Research and Development

Research and Development expense decreased by \$0.8 million, or 32%, to \$1.8 million for the three-month period ended June 30, 2023, from \$2.6 million for the three-month period ended June 30, 2022. The decrease is related to lower clinical trial expenses to develop our DFD-29 product as the project winds down. On July 11, 2023 we announced positive topline results from our two phase 3 clinical trials marking the commencement of the trials.

Selling, General and Administrative

Selling, general and administrative ("SG&A") expenses decreased by \$3.0 million, or 20%, to \$12.1 million for the three-month period ended June 30, 2023, from \$15.2 million for the three-month period ended June 30, 2022. The decrease is mainly due to our expense

[Table of Contents](#)

reduction efforts primarily in sales and marketing and other SG&A areas. During the last quarter of 2022, we implemented a cost reduction initiative designed to improve operational efficiencies, optimize expenses and reduce overall costs. The initiative is intended to reduce selling, general, and administrative expenses to better align costs with their revenue-generating capabilities. In connection with the cost reduction initiative, during the three-month period ended June 30, 2023, we executed a headcount reduction to our salesforce and implemented marketing and other cost cuts.

Loss on impairment of intangible assets

We recorded a loss on the impairment of intangible assets of \$3.1 million for the three-month period ended June 30, 2023 related to the impairment of the Ximino intangible asset. During the six-month period ended June 30, 2023, we experienced lower net product revenues and gross profit levels for the Ximino products.

Interest Expense

Interest expense increased by \$0.3 million to \$0.8 million for the three-month period ended June 30, 2023, from \$0.5 million for the three-month period ended June 30, 2022. The increase is primarily attributable to cash interest paid under the EWB Facility term loan as a result of interest rate increases during 2022 and 2023.

Comparison of the Six-Month Periods Ended June 30, 2023 and 2022

<i>(Sin thousands, except per share data)</i>	Six-Month Periods Ended June 30,		Change	
	2023	2022	\$	%
Revenue:				
Product revenue, net	\$ 29,126	\$ 39,031	\$ (9,905)	-25%
Other revenue	259	2,556	(2,297)	-90%
Total revenue	29,385	41,587	(12,202)	-29%
Operating expenses				
Cost of goods sold – product revenue	14,216	15,836	(1,620)	-10%
Research and development	3,807	3,875	(68)	-2%
Selling, general and administrative	25,433	29,906	(4,473)	-15%
Loss on impairment of intangible assets	3,143	—	3,143	100 %
Total operating expenses	46,599	49,617	(3,018)	-6%
Loss from operations	(17,214)	(8,030)	(9,184)	114 %
Other expense (income)				
Interest income	(201)	(7)	(194)	2771 %
Interest expense	1,406	843	563	67 %
Foreign exchange transaction losses	80	—	80	100 %
Total other expense (income)	1,285	836	449	54 %
Loss before income taxes	(18,499)	(8,866)	(9,633)	109 %
Income tax expense	—	40	(40)	-100%
Net Loss	\$ (18,499)	\$ (8,906)	\$ (9,593)	108 %

[Table of Contents](#)**Revenues**

The following table reflects our net product revenue for the six-month periods ended June 30, 2023 and 2022:

<i>(Sin thousands)</i>	Six-Month Periods Ended June 30,		Change	
	2023	2022	\$	%
Qbrexza®	\$ 12,173	\$ 13,487	\$ (1,314)	-10%
Accutane®	10,227	10,107	120	1 %
Amzeeq®	2,568	4,731	(2,163)	-46%
Zilxi®	886	1,297	(411)	-32%
Targadox®	1,457	5,390	(3,933)	-73%
Exelderm®	1,049	2,017	(968)	-48%
Ximino®	766	2,002	(1,236)	-62%
Total net product revenue	\$ 29,126	\$ 39,031	\$ (9,905)	-25%

Total net product revenues decreased by \$9.9 million, or 25.0%, to \$29.1 million for the six-month period ended June 30, 2023, from \$39.0 million for the six-month period ended June 30, 2022. The decrease is primarily due to lower unit volumes from our legacy products, Targadox, Ximino and Exelderm, substantially driven by continued generic competition for Targadox. In addition, the six-month period ended June 30, 2023 was negatively impacted by higher gross-to-net allowances for coupon rebates as a result of higher deductible rate resets, which occur at the beginning of each year, higher managed care rebates due to higher managed care program costs, higher product returns from higher-than-anticipated returns from the Dermira product lots purchased in 2021, and higher government rebates from increases in state rebate programs.

Other revenue

<i>(Sin thousands)</i>	Six-Month Periods Ended June 30,		Change	
	2023	2022	\$	%
Other revenue	\$ 259	\$ 2,556	\$ (2,297)	-90%
Total other revenue	\$ 259	\$ 2,556	\$ (2,297)	-90%

Other revenues decreased approximately \$2.3 million, to \$0.3 million for the six-month period ended June 30, 2023, from \$2.6 million for the six-month period ended June 30, 2022. Other revenue reflects royalties on sales of Rapifort® Wipes 2.5% in Japan, from Maruho, the Company's exclusive out-licensing partner in Japan. Other revenue for the six-month period ended June 30, 2022 includes a net \$2.5 million milestone payment from Maruho. In January 2022, Maruho received manufacturing and marketing approval in Japan for Rapifort® Wipes 2.5% (Japanese equivalent to U.S. FDA approved QBREXZA®), for the treatment of primary axillary hyperhidrosis, triggering the one-time net payment.

Gross-to-Net Sales Accruals

We record gross-to-net sales accruals for chargebacks, distributor service fees, prompt pay discounts, sales returns, coupons, managed care rebates, government rebates, and other allowances customary to the pharmaceutical industry.

Gross-to-net sales accruals and the balance in the related allowance accounts for the six-month period ended June 30, 2023 and 2022, were as follows:

[Table of Contents](#)

(\$'s in thousands)	Chargebacks and other allowances	Distributor Service Fees	Prompt Pay Discounts	Returns	Coupons	Managed Care Rebates	Gov't Rebates	Total
Balance as of December 31, 2022	\$ 253	\$ 929	\$ 207	\$ 3,689	\$ 1,696	\$ 3,594	\$ 1,010	\$ 11,378
Current provision related to sales in the current period	1,371	2,898	548	4,173	53,694	11,414	4,341	78,439
Checks/credits issued to third parties	(1,359)	(2,948)	(563)	(3,317)	(57,465)	(11,276)	(1,934)	(78,862)
Reclass coupon vendor deposit to accounts payable	—	—	—	—	6,167	—	—	6,167
Balance as of June 30, 2023	<u>\$ 265</u>	<u>\$ 879</u>	<u>\$ 192</u>	<u>\$ 4,545</u>	<u>\$ 4,092</u>	<u>\$ 3,732</u>	<u>\$ 3,417</u>	<u>\$ 17,122</u>

(\$'s in thousands)	Chargebacks and other allowances	Distributor Service Fees	Prompt Pay Discounts	Returns	Coupons	Managed Care Rebates	Gov't Rebates	Total
Balance as of December 31, 2021	\$ 622	\$ 791	\$ 197	\$ 3,240	\$ 4,992	\$ 3,492	\$ 690	\$ 14,024
Current provision related to sales in the current period	1,111	2,852	526	2,290	66,529	10,234	1,756	85,298
Checks/credits issued to third parties	(1,460)	(2,710)	(529)	(2,803)	(69,022)	(10,535)	(1,228)	(88,287)
Balance as of June 30, 2022	<u>\$ 273</u>	<u>\$ 933</u>	<u>\$ 194</u>	<u>\$ 2,727</u>	<u>\$ 2,499</u>	<u>\$ 3,191</u>	<u>\$ 1,218</u>	<u>\$ 11,035</u>

Our provision for gross-to-net allowances was \$17.1 million at June 30, 2023, compared to \$11.4 million at December 31, 2022. The increase is mainly due to the reclassification of certain coupon deposits to accounts payable as the related coupon accrual for these coupons has decreased while we continue to have accounts payables to the vendor for these processed coupons.

During the second quarter we implemented an additional coupon processing access program for our specialty pharmaceutical customers (direct customers) whereby upon prescription fulfillment and application of a coupon we would provide a credit to the direct customer which is reflected as reduction of the accounts receivable as they will deduct the credit against sales invoices remitted to us. Previously for these customers the coupons were processed and funded by a coupon vendor which we reimbursed for funded coupons. The change in coupon vendor did not impact the classification of the coupon provision in the Company's condensed consolidated statements of operations. We continue to estimate coupon cost at the time of sale.

Cost of Goods Sold

Cost of goods sold decreased by \$1.6 million, or 10%, to \$14.2 million for the six-month period ended June 30, 2023, from \$15.8 million for the six-month period ended June 30, 2022. The decrease is mainly due to lower than-prior-year product royalties of \$2.9 million driven by lower sales, and a substantial contractual decrease in the Qbrezza royalty percentage from the prior year period. In addition, the six-month period ended June 30, 2022 included an inventory step-up of \$0.3 million for inventory units sold related to the acquired finished goods for Ameeq® and Zilxi® from Vyne in January 2022. These decreases are offset by higher cost of goods driven by higher than-prior-year inventory reserves of \$0.5 million primarily related to expired finished goods, raw material inventory, and inventory estimated to be in excess of anticipated usage. Additionally, prescription drug user fee and product license amortization increased by \$0.5 million and \$0.1 million, respectively, from the six-month period ended June 30, 2022.

Research and Development

Research and Development expense decreased by \$0.1 million, or 2%, to \$3.8 million for the six-month period ended June 30, 2023, from \$3.9 million for the six-month period ended June 30, 2022. The decrease is related to lower clinical trial expenses to develop our DFD-29 product as the project winds down. On July 11, 2023 we announced positive topline results from our two phase 3 clinical trials marking the commencement of the trials.

Selling, General and Administrative

Selling, general and administrative expenses decreased by \$4.5 million, or 15%, to \$25.4 million for the six-month period ended June 30, 2023, from \$29.9 million for the six-month period ended June 30, 2022. The decrease is mainly due to our expense reduction efforts primarily in sales and marketing and other SG&A areas. During the last quarter of 2022, we implemented a cost reduction initiative designed to improve operational efficiencies, optimize expenses and reduce overall costs. The initiative is intended to reduce selling,

[Table of Contents](#)

general, and administrative expenses to better align costs with their revenue-generating capabilities. In connection with the cost reduction initiative, during the six-month period ended June 30, 2023, we executed a headcount reduction to our salesforce and implemented marketing and other cost cuts.

Loss on impairment of intangible assets

We recorded a loss on the impairment of intangible assets of \$3.1 million for the six-month period ended June 30, 2023 related to the impairment of the Ximino intangible asset. During the six-month period ended June 30, 2023, we experienced lower net product revenues and gross profit levels for the Ximino products.

Interest Expense

Interest expense increased by \$0.6 million to \$1.4 million for the six-month period ended June 30, 2023, from \$0.8 million for the six-month period ended June 30, 2022. The increase is primarily attributable to cash interest paid under the EWB Facility term loan as a result of interest rate increases during 2022 and 2023.

Liquidity and Capital Resources

At June 30, 2023, we had \$8.2 million in cash and cash equivalents as compared to \$32.0 million of cash and cash equivalents at December 31, 2022. Additionally at June 30, 2023, the Company has \$8.75 million of restricted cash. In July 2023 we utilized the restricted cash of \$8.75 million and \$1.25 million of cash to fully repay the EWB Facility.

On December 30, 2022, we filed a shelf registration statement on Form S-3 (File No. 333-269079), which was declared effective by the Securities and Exchange Commission (“SEC”) on January 26, 2023. This shelf registration statement covers the offering, issuance, and sale by us of up to an aggregate of \$150.0 million of our common stock, preferred stock, debt securities, warrants, and units (the “2022 Shelf”). At June 30, 2023, \$150.0 million remains available under the 2022 Shelf. In connection with the 2022 shelf, we entered into an At Market Issuance Sales Agreement (the “Sales Agreement”) with B. Riley Securities, Inc. (“B. Riley”), relating to shares of our common stock. In accordance with the terms of the Sales Agreement, we may offer and sell up to 4,900,000 shares of our common stock, par value \$0.0001 per share, from time to time through or to B. Riley acting as our agent or principal. As of June 30, 2023, no shares have been issued under the 2022 Shelf.

As a result of increased losses in the latter part of 2022, during the last quarter of 2022, we implemented a cost reduction initiative designed to improve operational efficiencies, optimize expenses and reduce overall costs. The initiative is intended to reduce selling, general, and administrative expenses to better align costs with their revenue-generating capabilities. In connection with the cost reduction initiative, during the six-month period ended June 30, 2023, we executed a headcount reduction to our salesforce and implemented marketing and other cost cuts. The impact of the cost reduction initiatives is expected to result in a reduction of greater than \$12.0 million of annual selling, general, and administrative costs.

We may seek a new borrowing relationship now that the EWB Facility has been terminated to provide additional working capital, and/or may seek to raise capital through additional debt or equity financing. We cannot make any assurances that such additional financing will be available to us and, if available, the terms may negatively impact our business and operations. As such, substantial doubt exists about our ability to continue as a going concern for a period of at least twelve months from the date of issuance of the financial statements included in this Quarterly Report on Form 10-Q.

Cash Flows for the Six-Month Periods Ended June 30, 2023 and 2022

(\$ in thousands)	Six-Month Periods Ended June 30,		Increase (Decrease)
	2023	2022	
Net cash provided by (used in) operating activities	\$ 3,013	\$ (2,416)	\$ 5,429
Net cash used in investing activities	(5,000)	(20,000)	15,000
Net cash provided by (used in) financing activities	(13,036)	11,477	(24,513)
Net change in cash and cash equivalents	\$ (15,023)	\$ (10,939)	\$ (4,084)

[Table of Contents](#)

Operating Activities

Net cash flows provided by operating activities for the six-month period ended June 30, 2023 increased by \$5.4 million to \$3.0 million from net cash flows used by operating activities of \$2.4 million for the six-month period ended June 30, 2022. The increase was driven primarily by the non-cash intangible asset impairment of \$3.1 million, as well as an increase in cash inflows associated with the net changes in operating assets and liabilities of \$11.2 million primarily attributable to accounts receivable, inventory, and accrued expenses. This was offset by an increase in the net loss of \$9.6 million.

Investing Activities

Net cash used in investing activities decreased by \$15.0 million from period-to-period. The six-month period ended June 30, 2023 reflects the \$5.0 million deferred cash payment paid in January 2023 related to the VYNE Product Acquisition. The six-month period ended June 30, 2022 reflects the upfront \$20.0 million payment for the VYNE Product Acquisition.

Financing Activities

Net cash flows used in financing activities for six-month period ended June 30, 2023 increased by \$24.5 million to \$13.0 million from \$11.5 million of cash flows provided by financing activities for the six-month period ended June 30, 2022. The increase reflects a cash outflow of \$10.0 million for the repayment of principal on the EWB term loan and net cash outflows of \$2.9 million from the EWB revolving line of credit. Net cash provided by financing activities for the six-month period ended June 30, 2022 reflects net proceeds of \$14.8 million from the EWB term loan offset by \$2.0 million in payments of the installment notes related to our previously acquired products and \$0.8 million for repayment of our EWB revolving line of credit. Net cash provided by financing activities for the six-month period ended June 30, 2022 also reflects approximately \$0.6 million in payments for debt issue and offering costs associated with our previously outstanding convertible preferred stock and our initial public offering of securities, which closed in November 2021.

Material Cash Requirements

In the normal course of business, we enter into contractual obligations that contain cash requirements of which the most significant to date include the following:

- As of June 30, 2023, we were required to make payments under the EWB Facility. In July 2023, we voluntarily repaid the entire \$10.0 million outstanding term loan principal balance. The repayment satisfied all of the Company's outstanding debt obligations under the EWB Facility. We therefore have no further obligations to EWB.
- Pursuant to our January 2022 agreement with VYNE Therapeutics, Inc. under which we acquired Amzeeq® and Zilxi® (the "VYNE Product Acquisition Agreement"), upon the achievement of net sales milestone payments with respect to the products purchased in the VYNE Product Acquisition Agreement, we are also required to pay contingent consideration consisting of a one-time payment, per product, of \$10 million, \$20 million, \$30 million, \$40 million and \$50 million upon each product reaching annual sales of \$100 million, \$200 million, \$300 million, \$400 million and \$500 million, respectively. Each required payment must only be paid one time following the first achievement of the applicable annual sales milestone amount.
- On June 29, 2021, we entered into a license, collaboration, and assignment agreement (the "DFD-29 Agreement") to obtain the global rights for the development and commercialization of a late-stage development modified release oral minocycline for the treatment of rosacea ("DFD-29") with Dr. Reddy's Laboratories, Ltd ("DRL"). Based on the development and commercialization of DFD-29, additional contingent regulatory and commercial milestone payments totaling up to \$158.0 million may also become payable. Royalties ranging from ten percent to twenty percent are payable on net sales of the product. Additionally, the Company was required to fund and oversee the Phase 3 clinical trials beginning upon the license of DFD-29 in 2021. The Phase 3 clinical trials substantially concluded in July 2023 upon the receipt of positive topline results from the trials. The Company expects to pay an approximately \$3.2 million filing fee in the fourth quarter to the FDA upon filing of DFD-29.

[Table of Contents](#)

- We are contractually obligated to make installment milestone payments on our acquired licenses as follow:

Product	Payments by Period		
	Total	2023 (\$'s in thousands)	2024
Ximino	\$ 3,000	\$ 1,500	\$ 1,500
Accutane	1,000	1,000	—
Total	<u>\$ 4,000</u>	<u>\$ 2,500</u>	<u>\$ 1,500</u>

- We are contractually obligated to make sales-based royalty payments to Dermira (for Qbrexza), Sun Pharmaceutical Industries (for Exelderm and Ximino) and PuraCap Caribe (for Targadox). Due to the contingent nature of these obligations, the amounts of these payments cannot be reasonably predicted.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise required under this item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness, as of June 30, 2023, of the design and operation of our disclosure controls and procedures, as such term is defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based on this evaluation, our principal executive officer and principal financial officer have concluded that, as of such date, our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

No change in internal control over financial reporting occurred during the most recent quarter with respect to our operations, which materially affected, or is reasonable likely to materially affect, our internal controls over financial reporting.

Part II. Other Information

Item 1. Legal Proceedings.

To our knowledge, there are no legal proceedings pending against us, other than routine actions, administrative proceedings, and other actions not deemed material, that are expected to have a material adverse effect on our financial condition, results of operations, or cash flows. In the ordinary course of business, however, the Company may be subject to both insured and uninsured litigation. Suits and claims may be brought against the Company by customers, suppliers, partners and/or third parties (including tort claims for personal injury arising from clinical trials of the Company's product candidates and property damage) alleging deficiencies in performance, breach of contract, etc., and seeking resulting alleged damages.

Item 1A. Risk Factors.

We have disclosed below, as well as under the heading "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 (the "2022 Form 10-K"), supplemented by the disclosure below, a number of risks which may materially affect our business, financial condition or results of operations. You should carefully consider these Risk Factors and other information set forth elsewhere in this Quarterly Report on Form 10-Q. You should be aware that these risk factors and other information may not describe every risk facing our Company. Additional risks and uncertainties not currently known to us may also materially adversely affect our business, financial condition and/or results of operations.

There is substantial doubt regarding our ability to continue as a going concern. We may need to raise additional funding (which may not be available on acceptable terms to the Company, or at all) and/or to delay, limit or terminate certain of our product development and commercialization efforts or other operations.

Based on our current business plan and the current amount of cash and cash equivalents available to us, we have concluded that there is substantial doubt regarding our ability to continue as a going concern for a period of at least 12 months from the date of the issuance of the financial statements included in our Quarterly Report on Form 10-Q for the period ended June 30, 2023. In May 2023, we paid the remaining balance on our revolving line of credit in the amount of \$3.0 million and, in connection with an amendment to our credit facility with East West Bank, prepaid \$10.0 million of our term loan under that facility. The \$10.0 million remaining balance on the term loan was to be due July 1, 2024 and would have provided \$1.25 million of working capital through August 31, 2023. In July 2023, we repaid the term loan in full, and therefore our assets are now unencumbered and available to support a new borrowing relationship to provide additional working capital, which we plan to pursue along with our costs reduction initiatives in 2023. In addition to reductions in sales force and marketing expenses, we may also seek to raise capital through additional debt or equity financing, which may include sales of securities under our existing shelf registration statement on Form S-3, including under the Sales Agreement with B. Riley, or under a new registration statement.

Our efforts to raise additional funding may divert our management from its day-to-day activities, which may adversely affect our ability to develop and commercialize our products. In addition, we cannot guarantee that financing will be available in sufficient amounts or on terms acceptable to us, if at all. Moreover, the terms of any financing may adversely affect the holdings or the rights of our stockholders and the issuance of additional securities, whether equity or debt, by us, or the possibility of such issuance, may cause the market price of our common stock to decline. The sale of additional equity or convertible securities would dilute all of our stockholders. Potential indebtedness, if incurred, would result in increased fixed payment obligations, and we may be required to agree to certain restrictive covenants, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. We may be required to relinquish rights to some of our technologies or products or otherwise agree to terms unfavorable to us, any of which may have a material adverse effect on our business, operating results and prospects.

If funding for our operations is not available or not available on terms acceptable to us, our strategic plans may be limited. In addition, in order to address our current funding constraints, we may be required to further revise our business plan and strategy, which may result in us (i) significantly curtailing, delaying or discontinuing our DFD-29 research or development programs or the commercialization of any other products, (ii) selling certain of our assets and/or (iii) being unable to expand our operations or otherwise capitalize on our business opportunities. Such actions measures may become necessary whether or not we are able to raise additional capital. As a result, our business, financial condition, and results of operations could be materially affected.

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

During the period covered by this report, we have not sold any equity securities in transactions that were not registered under the Securities Act, and we nor our affiliates have purchased any equity securities issued by us.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not Applicable.

Item 5. Other Information.

None.

[Table of Contents](#)

Item 6. Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Third Amended and Restated Certificate of Incorporation of Journey Medical Corporation, filed as Exhibit 3.1 to Form 10-K, filed on March 28, 2022 and incorporated herein by reference.
3.2	Amended and Restated Bylaws of Journey Medical Corporation, filed as Exhibit 3.2 to Form 10-K, filed on March 28, 2022 and incorporated herein by reference.
4.1	Form of Common Stock Certificate, filed as Exhibit 4.1 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
4.2	Description of Securities of Journey Medical Corporation, filed as Exhibit 4.2 to Form 10-K, filed on March 28, 2022 and incorporated herein by reference.
10.1	Fifth Amendment to Loan and Security Agreement, dated as of May 16, 2023, by and among East West Bank, Journey Medical Corporation and JG Pharma, Inc.**
10.2	Journey Medical Corporation 2023 Employee Stock Purchase Plan, filed as Exhibit 10.1 to Form 8-K, filed on June 23, 2023 and incorporated herein by reference.
31.1	Certification of Chief Executive Officer of Journey Medical Corporation pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated August 10, 2023.**
31.2	Certification of Principal Financial Officer of Journey Medical Corporation pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated August 10, 2023.**
32.1	Certification of Chief Executive Officer of Journey Medical Corporation pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated August 10, 2023.***
32.2	Certification of Principal Financial Officer of Journey Medical Corporation pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated August 10, 2023.***
101	The following financial information from the Company's quarterly report on Form 10-Q for the period ended June 30, 2023, formatted in Inline Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations, (iii) the Condensed Consolidated Statement of Stockholders' Equity, (iv) the Condensed Consolidated Statements of Cash Flows, and (v) Notes to the Condensed Consolidated Financial Statements (filed herewith).**
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).**

** Filed herewith.

*** Furnished herewith.

SIGNATURES

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

**Journey Medical Corporation
(Registrant)**

Date: August 10, 2023

By: /s/ Claude Maraoui

Claude Maraoui
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 10, 2023

By: /s/ Joseph Benesch

Joseph Benesch
Interim Chief Financial Officer
(Principal Financial Officer)

**FIFTH AMENDMENT TO
LOAN AND SECURITY AGREEMENT**

This FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT (this "Amendment") is dated as of May 16, 2023, and is by and among EAST WEST BANK, a California banking corporation ("Bank"), JOURNEY MEDICAL CORPORATION, a Delaware corporation ("Parent"), and JG PHARMA, INC., a Delaware corporation ("JG"; together with Parent, each individually, a "Borrower" and collectively, the "Borrowers").

WITNESSETH:

WHEREAS, Borrowers and Bank are parties to the certain Loan and Security Agreement dated as of March 31, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement");

WHEREAS, Borrowers have requested that Bank amend certain provisions of the Loan Agreement, and Bank has agreed to do so, subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in the Loan Agreement and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS; INTERPRETATION

(a) All capitalized terms used herein (including the recitals hereto) will have the respective meanings ascribed thereto in the Loan Agreement unless otherwise defined herein. The foregoing recitals, together with all schedules and exhibits attached hereto, are incorporated by this reference and made a part of this Amendment. Unless otherwise provided herein, all section, schedule and exhibit references herein are to the corresponding sections and exhibits of this Amendment.

2. ACKNOWLEDGMENTS AND AGREEMENTS

(a) **Acknowledgment of Obligations.** Each Borrower hereby acknowledges, confirms and agrees that as of open of business on May 10, 2023, (a) Borrowers are indebted to Bank in respect of Advances in the principal amount of \$0, and (b) Borrowers are indebted to bank in respect of the Term Loan in the aggregate principal amount of \$20,000,000. Each Borrower hereby acknowledges and agrees that (i) effective as of the earliest occurrence of an Event of Default, Bank will and is entitled to charge interest on the Obligations a per annum rate equal to five (5) percentage points above the per annum rate otherwise applicable thereunder (the "Default Rate") in accordance with Section 2.3(b) of the Loan Agreement. Each Borrower further acknowledges, confirms and agrees that all such amounts shall constitute Obligations, together with interest (including interest at the Default Rate) accrued and accruing thereon, and all fees, costs, expenses and other charges now or hereafter payable by any Borrower to Bank, are unconditionally owing

by Borrowers to Bank and, when due, shall be payable in accordance with the terms of the Loan Agreement without offset, defense or counterclaim of any kind, nature or description whatsoever.

(b) **Acknowledgment of Existing Security Interests.** Each Borrower hereby acknowledges, confirms and agrees that Bank has valid, enforceable and perfected liens upon and security interests in the Collateral heretofore granted to Bank, including, without limitation, pursuant to this Amendment, for the benefit of Bank, pursuant to the Loan Agreement and the other Loan Documents or otherwise granted to or held by Bank, for the benefit of Bank. After giving effect to this Amendment, neither the modification of the Loan Agreement effectuated pursuant to this Amendment nor the execution, delivery, performance or effectiveness of this Amendment impairs the validity, effectiveness or priority of the Liens previously granted pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred or requires that any new filings be made or other action be taken to perfect or to maintain the perfection of such liens.

(c) **Binding Effect of Documents.** Each Borrower hereby acknowledges, confirms and agrees that: (a) this Amendment constitutes a Loan Document, (b) each of the Loan Agreement and the other Loan Documents to which it is a party has been duly executed and delivered to Bank by such Borrower, and each is and will remain in full force and effect as of the date hereof except as modified pursuant hereto, (c) the agreements and obligations of such Borrower contained in such documents and in this Amendment constitute the legal, valid and binding Obligations of such Borrower, enforceable against it in accordance with their respective terms, and such Borrower has no valid defense to the enforcement of such Obligations, (d) Bank is and will be entitled to the rights, remedies and benefits provided for under the Loan Agreement and the other Loan Documents and applicable law and (e) such Borrower shall comply with all limitations, restrictions or prohibitions that would otherwise be effective or applicable under the Loan Agreement or any of the other Loan Documents during the continuance of any Event of Default.

3. AMENDMENTS TO LOAN AGREEMENT. In reliance upon the representations and warranties set forth herein and subject to the conditions of effectiveness set forth herein, the Loan Agreement is hereby amended as follows:

(a) the Loan Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as reflected in the modifications set forth in the document attached hereto as Schedule 1;

(b) Exhibit A to the Loan Agreement is hereby amended and restated in its entirety as set forth on Exhibit A attached hereto; and

(c) Exhibit D to the Loan Agreement is hereby amended and restated in its entirety as set forth on Exhibit B attached hereto.

4. REPRESENTATIONS AND WARRANTIES. To induce Bank to enter into this Amendment, each Borrower represents and warrants to Bank that:

(a) the execution, delivery and performance of this Amendment has been duly authorized by all requisite corporate action on the part of each Borrower, and this Amendment has been duly executed and delivered by such Borrower;

(b) immediately before and after giving effect to this Amendment and the consummation of the transactions contemplated by this Amendment, each of the representations and warranties of each Borrower set forth in the Loan Agreement and the other Loan Documents is true and correct in all material respects on and as of the date hereof (unless such representation or warranty specifically relates to an earlier date, in which case such representation or warranty was true and correct on all material respects as of such earlier date);

(c) both immediately before and after giving effect to this Amendment and the consummation of the transactions contemplated by this Amendment, no Default or Event of Default has occurred and is continuing; and

(d) this Amendment constitutes the legal, valid and binding obligation of each Borrower and is enforceable against such Borrower in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

5. CONDITIONS TO EFFECTIVENESS. The effectiveness of Section 3 of this Amendment is subject to satisfaction the following conditions precedent in a manner reasonably satisfactory to Bank:

(a) Borrowers shall have (i) repaid in full in cash the outstanding principal balance of the Advances on the date hereof, together with all accrued and unpaid interest thereon and (ii) repaid the outstanding principal balance of the Term Loan on the date hereof in an aggregate amount of not less than \$10,000,000, which shall be applied to prepay installments of the Term Loan in inverse order of maturity (for the avoidance of doubt the amount that is due and payable on the Term Loan Maturity Date constitutes an installment), together with all accrued and unpaid interest thereon;

(b) Bank shall have received (i) this Amendment, duly executed by the parties hereto, and (ii) an assignment of deposit, duly executed by each Borrower;

(c) immediately before and after giving effect to this Amendment and the consummation of the transactions contemplated by this Amendment, each of the representations and warranties of each Borrower set forth in the Loan Agreement and the other Loan Documents is true and correct in all material respects on and as of the date hereof (unless such representation or warranty specifically relates to an earlier date, in which case such representation or warranty was true and correct on all material respects as of such earlier date);

(d) no Event of Default shall have occurred and be continuing; and

(e) Borrowers shall have paid all fees, costs and expenses required to be paid to Bank pursuant to the terms of the Loan Documents, including an amendment fee equal to \$15,000, which fee shall be fully earned and due and payable in full on the date hereof.

6. MISCELLANEOUS.

(a) Costs and Expenses. In connection with this Amendment, Borrowers hereby agree to pay all costs and expenses as required under the Loan Agreement.

(b) Release.

(i) In consideration of the agreements of Bank contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Borrower, on behalf of itself and its successors and assigns, and, to the extent that such Borrower can legally bind any such Person (other than with respect to Claims derivative of any Borrower) its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (Borrowers and all such other Persons being hereinafter referred to collectively as the "Releasing Parties" and individually as a "Releasing Party"), hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Bank, and each of its successors and assigns, and their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, investment managers, attorneys, employees, agents, legal representatives and other representatives (Bank and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of set off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, which any Releasing Party or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever solely if it arises at any time on or prior to the date of this Amendment, including, without limitation, for or on account of, or in relation to, or in any way in connection with this Amendment, the Loan Agreement, any of the other Loan Documents or any of the transactions hereunder or thereunder. Borrowers hereby represent to the Releasees that they have not assigned or transferred any interest in any Claims against any Releasee prior to the date hereof.

(ii) Each Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense to any Claim and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(iii) Each Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered will affect in any manner the final, absolute and unconditional nature of the release set forth above.

(c) Covenant Not to Sue. Each Releasing Party hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by any Releasing Party pursuant to Section 6(b) above. If any Releasing Party violates the foregoing covenant, each Borrower, for itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

(d) Reviewed by Attorneys. Each Borrower represents and warrants to Bank that it (a) understands fully the terms of this Amendment and the consequences of the execution and delivery of this Amendment, (b) has been afforded an opportunity to discuss this Amendment with, and have this Amendment reviewed by, such attorneys and other persons as such Borrower may wish, and (c) has entered into this Amendment and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person. The parties hereto acknowledge and agree that neither this Amendment nor the other documents executed pursuant hereto will be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation and preparation of this Amendment and the other documents executed pursuant hereto or in connection herewith.

(e) Relationship. Each Borrower agrees that the relationship between Bank and such Borrower is that of creditor and debtor and not that of partners or joint venturers. This Amendment does not constitute a partnership agreement, or any other association between Bank and such Borrower. Each Borrower acknowledges that Bank has acted at all times only as a creditor to such Borrower within the normal and usual scope of the activities normally undertaken by a creditor. Each Borrower further acknowledges that Bank has not taken or failed to take any action under or in connection with its respective rights under the Loan Agreement or any of the other Loan Documents that in any way, or to any extent, has interfered with or adversely affected Borrower's ownership of Collateral.

(f) Waivers/Acknowledgments by Borrowers. Each Borrower agrees that, in connection with the repayment in full of the Obligations (other than contingent indemnification obligations for which no claim has been made) and termination of the Loan Documents, to execute a customary payoff letter or payoff agreement which, unless Bank otherwise consents, shall include (i) an agreement of the Borrowers to indemnify Bank from any loss or damage Bank may incur as the result of dishonored checks or other items of payment received by Bank from any Borrower, or any account debtor, and applied to the Obligations for a period of forty five (45) days following such payoff, and (ii) releasing Bank and certain related parties from all claims arising

on or before the date of such payoff (other than for breaches by Bank of the payoff letter or payoff agreement itself). Each Borrower acknowledges that the foregoing agreement is a material inducement to Bank entering into this Amendment and that Bank is relying upon the foregoing agreement in its future dealings with the Borrowers. The Borrowers acknowledge and agree that the obligations and agreements of the Borrowers under this Section 6(f) are secured by Bank's Liens on the Collateral, *provided, however*, if the payoff letter includes the foregoing matters, upon payment in full of the Obligations (other than contingent indemnification obligations for which no claim has been made) the Liens securing the Obligations shall be released.

(g) Disgorgement. To the extent not prohibited by applicable law, if Bank is, for any reason, compelled by a court or other tribunal of competent jurisdiction to surrender or disgorge any payment, interest or other consideration described hereunder to any person because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reason, such indebtedness or part thereof intended to be satisfied by virtue of such payment, interest or other consideration will be revived and continue as if such payment, interest or other consideration had not been received by Bank, and the Borrowers will be liable to, and will indemnify, defend and hold Bank harmless for, the amount of such payment or interest surrendered or disgorged. The provisions of this Section will survive repayment of the Obligations or any termination of the Loan Agreement or any other Loan Document.

(h) Severability. In case any provision of this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(i) Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment.

(j) Entire Agreement. This Amendment and the other Loan Documents embody the entire understanding and agreement among the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

(k) Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Amendment. Delivery of an executed counterpart of a signature page of this Amendment or any of the Loan Documents by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Amendment.

(l) Governing Law. Without limiting the applicability of any other provision of the Loan Agreement or any other Loan Document, the terms and provisions set forth in Section 11 of the Loan Agreement are expressly incorporated herein by reference.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers on the date first written above.

BANK:

EAST WEST BANK

By: /s/ Robert Mostert

Name: Robert Mostert

Title: FVP

Signature Page to Fifth Amendment to Loan and Security Agreement

BORROWERS:

JOURNEY MEDICAL CORPORATION

By: /s/ Claude Maraoui

Name: Claude Maraoui

Title: President & CEO

JG PHARMA, INC.

By: /s/ Claude Maraoui

Name: Claude Maraoui

Title: President & CEO

Signature Page to Fifth Amendment to Loan and Security Agreement

Schedule 1
Amended Loan Agreement

[attached]

Signature Page to Fifth Amendment to Loan and Security Agreement

JOURNEY MEDICAL CORPORATION

JG PHARMA, INC.

EAST WEST BANK

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT is entered into as of March 31, 2021, by and among **EAST WEST BANK** (“Bank”) and **JOURNEY MEDICAL CORPORATION** (“PARENT”) and **JG PHARMA, INC.** (“JG”); Parent and JG are sometimes referred to, individually, as a “Borrower” and, collectively, as the “Borrowers”).

RECITALS

The Borrowers wish to obtain credit from time to time from Bank, and Bank desires to extend credit to the Borrowers. This Agreement sets forth the terms on which Bank will advance credit to the Borrowers, and the Borrowers will repay the amounts owing to Bank.

AGREEMENT

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, the following terms shall have the following definitions:

[“Acceptable Payoff Transaction” has the meaning assigned in Section 6.14.](#)

“Accounts” means all presently existing and hereafter arising accounts, contract rights, payment intangibles, and all other forms of obligations owing to a Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by a Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by a Borrower and such Borrower’s Books relating to any of the foregoing.

“Advance” or “Advances” means a cash advance or cash advances under the Revolving Facility.

“Affiliate” means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, and any Person that controls or is controlled by or is under common control with such Person, and each of such Person’s senior executive officers, directors, and partners.

~~“Amortization Date” means the first Payment Date following the expiration of the Interest Only Period.~~

[“Assignment of Deposit” means the Assignment of Deposit dated as of the Fifth Amendment Date, entered into by Borrowers as depositor in favor of Bank.](#)

“Bank Expenses” means all costs or expenses (including attorneys’ fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; Collateral audit fees; lockbox services fees, and Bank’s attorneys’ fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and

expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

“Borrower’s Books” means all of a Borrower’s books and records including: ledgers; records concerning a Borrower’s assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

“Borrowing Base” means an amount equal to eighty five percent (85%) of Eligible Accounts, as determined by Bank with reference to the most recent Borrowing Base Certificate delivered by the Borrowers, and assuming dilution of not more than 2.5% on each Collateral audit; provided however, that the Borrowing Base may be revised from time to time by Bank following each Collateral audit or as Bank deems necessary in Bank’s Permitted Discretion and upon three (3) Business Days’ prior written notice thereof to the Borrowers.

“Borrowing Base Certificate” is a certificate in substantially the form of Exhibit C.

“Budget” means a 13-week rolling projection or forecasts as of such date, in form and substance reasonably satisfactory to Bank, prepared by Borrower’s management, projecting the operations of the Borrowers and including, without limitation, a cash flow forecast that includes, without limitation, the Projected Information, as amended from time to time with the prior written consent of Bank in its sole discretion.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

“Cash Equivalents” means: (a) securities issued or directly and fully guaranteed or insured by the United States, or, any agency or instrumentality thereof, having maturities of not more than one (1) year from the date of acquisition; (b) certificates of deposit, time deposits, overnight bank deposits or bankers’ acceptances issued by any bank or trust company in each case subject to regulation by the Federal Deposit Insurance Corporation; (c) repurchase obligations for underlying securities of the types described in clauses (a) and (b) entered into with any Person referenced in clause (b) above; (d) commercial paper maturing no more than one year from the date of creation thereof and rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by S&P or “P-2” or the equivalent thereof by Moody’s; (e) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America, or any political subdivision or taxing authority thereof, in each case, having one of the two highest rating categories obtainable from either Moody’s or S&P with maturities of not more than one year from the date of acquisition; (f) interests in any investment company or money market fund which invests a majority of its assets in instruments of the type specified in clauses (a) through (e) above in each case subject to the terms and conditions of Section 6.8 of this Agreement; and (g) any other Investments in cash equivalents as described in any Borrower’s investment policy, as such investment policy has been approved by Bank in writing.

“Change in Control” means (i) at any time prior to an initial public offering of the Equity Interests of any Borrower, the occurrence of any transaction by which (A) the holders of the Equity Interests of Parent as of the Closing Date (collectively, the “Permitted Holders”) shall cease to own at least a majority of the outstanding voting Equity Interests of Parent on a fully diluted basis and (B) Parent shall cease to own at least one hundred percent (100%) of the outstanding voting Equity Interests of JG on a fully diluted basis and (ii) at any time after an initial public offering of the Equity Interests of any Borrower, any Person, entity, or “group” (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended), other than the Permitted Holders, shall at any time have acquired direct or indirect beneficial ownership of a percentage of the outstanding voting Equity Interests of any Borrower that exceeds 35% thereof, unless the Permitted Holders have, at such time, the right or the ability by voting power, contract, or otherwise to elect or designate for election at least a majority of the board of directors of such Borrower.

“Closing Date” means the date of this Agreement.

“Code” means the California Uniform Commercial Code.

“Collateral” means the property described on Exhibit A attached hereto.

~~“Collateral Value” means, as of any date of determination, the sum of (a) Borrowers’ Cash on deposit with Bank on such date plus (b) the book value of Eligible Accounts, as reported in the most recent Borrowing Base Certificate delivered to Bank.”~~

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards, or merchant services issued or provided for the account of that Person; and (iii) all obligations arising under any agreement or arrangement designed to protect such Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by Bank in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“Copyrights” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof.

“Credit Extension” means each Advance, Term Loan, or any other extension of credit by Bank for the benefit of a Borrower hereunder.

“Daily Balance” means the amount of the Obligations owed at the end of a given day. “Dollar(s)” and the sign “\$” mean lawful money of the United States.

“Draw Period” means the period of time during which Tranche II is available to be drawn, commencing on the date that is six (6) months after the Third Amendment Date and ending on the date that is eighteen (18) months after the Third Amendment Date.

~~“EBITDA” means (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense, plus (d) income tax expense, plus (e) one time, non-recurring expenses, plus (f) non-cash stock-based compensation expenses, plus (g) other non-cash expenses approved in writing by~~ Bank in its sole discretion.

“Eligible Accounts” means those Accounts that arise in the ordinary course of a Borrower’s business that comply with all of such Borrower’s representations and warranties to Bank set forth in Section 5.4 and net after all offsets; provided, that standards of eligibility may be fixed and revised from time to time by Bank in Bank’s Permitted Discretion and upon three (3) Business Days’ prior written notice thereof to the Borrowers in accordance with the provisions hereof. Unless otherwise agreed to by Bank, Eligible Accounts shall not include the following:

- (a) Accounts that the account debtor has failed to pay within ninety (90) days of invoice date, provided that Accounts owing from AmerisourceBergen may be one hundred twenty (120) days, subject to a Collateral audit;
- (b) Accounts with respect to an account debtor, twenty-five percent (25%) of whose Accounts the account debtor has failed to pay within ninety (90) days of invoice date (one hundred twenty (120) days for AmerisourceBergen), in each case solely to the extent of such amount in excess of the aforementioned percentage;
- (c) Accounts with respect to which the account debtor is an officer, employee, or agent of a Borrower;
- (d) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, demo or promotional, or other terms by reason of which the payment by the account debtor may be conditional;
- (e) Accounts with respect to which the account debtor is an Affiliate of a Borrower;
- (f) Accounts with respect to which the account debtor does not have its principal place of business in the United States, except for Eligible Foreign Accounts;
- (g) Accounts with respect to which the account debtor is the United States or any department, agency, or instrumentality of the United States, except for Accounts of the United States or any department, agency, or instrumentality of the United States, the assignment of which has been acknowledged under the Assignment of Claims Act of 1940 (31 U.S.C. Section 3727) to the extent required and such assignment (to the extent required) otherwise complies with the

Assignment of Claims Act to Bank's reasonable satisfaction in the exercise of its reasonable credit judgment;

(h) Accounts with respect to which a Borrower is liable to the account debtor for goods sold or services rendered by the account debtor to a Borrower or for deposits or other property of the account debtor held by a Borrower, but only to the extent of any amounts owing to the account debtor against amounts owed to such Borrower;

(i) Accounts with respect to an account debtor, including Subsidiaries and Affiliates, whose total obligations to the Borrowers exceed twenty-five percent (25%) of all Accounts, to the extent such obligations exceed the aforementioned percentage, except as approved in writing by Bank;

(j) Accounts that have not yet been billed to the account debtor or that relate to deposits (such as good faith deposits) or other property of the account debtor held by a Borrower for the performance of services or delivery of goods which such Borrower has not yet performed or delivered;

(k) Prebillings, retention billings, progress billings or bonded receivables;

(l) Accounts with respect to which the account debtor disputes liability or makes any claim with respect thereto as to which Bank believes, in its sole discretion, that there may be a basis for dispute (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business; and

(m) Accounts that Bank determines in its Permitted Discretion to be unsatisfactory for inclusion as an Eligible Account.

"Eligible Foreign Accounts" means Accounts with respect to which the account debtor does not have its principal place of business in the United States and that (i) are supported by one or more letters of credit in an amount and of a tenor, and issued by a financial institution, reasonably acceptable to Bank, (ii) covered in full by credit insurance satisfactory to Bank, less any deductible, or (iii) that Bank approves on a case-by-case basis.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing.

"Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which a Borrower has any interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Event of Default" has the meaning assigned in Article 8.

“Fortress” means Fortress Biotech, Inc.

“Fifth Amendment” means that certain Fifth Amendment to Loan and Security Agreement, dated as of the Fifth Amendment Date, by and among Bank and the Borrowers.

“Fifth Amendment Date” means May [], 2023.

~~“Extension Milestone” means Borrowers’ delivery to Bank of evidence, in form and substance satisfactory to Bank in its reasonable discretion, that (1) no Event of Default that has not been cured, pursuant to the terms of this Agreement, or waived in writing by Bank has occurred after the Third Amendment Date, and (2) Borrowers have, on a consolidated basis, achieved a ratio of (a) Collateral Value to (b) the sum of (i) the aggregate amount outstanding under the Term Loan, plus (ii) the Revolving Line equal to at least 1.5 to 1.0.>~~

~~“Fixed Charge Coverage Ratio” means the ratio, measured on a trailing twelve (12) month basis as of any date of determination, of (a) the difference of (i) EBITDA, minus (ii) the sum, without duplication, of (y) capital expenditures (but excluding, upon prior written consent of Bank, other research and development expenditures), plus (z) income taxes paid, to (b) the aggregate amount of principal and interest payments on Indebtedness due in cash during such period.>~~

“Fortress Indebtedness” means the Indebtedness owing by Parent to Fortress under the Fortress Note.

“Fortress Note” means the Future Advance Promissory Note issued by Parent in favor of Fortress on June 6, 2015.

“GAAP” means generally accepted accounting principles as in effect from time to time.

“Indebtedness” means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

“Insolvency Proceeding” means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means all of a Borrower’s right, title, and interest in and to the Copyrights, Trademarks and Patents.

~~“Interest Expense” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including,~~

~~in any event, interest expense with respect to any Credit Extension and other Indebtedness of a Borrower, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers' acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).>~~

~~<"Interest Only Period" means the period of time commencing on the Third Amendment Date through January 12, 2024; provided, however, if Borrowers consummate the Extension Milestone by January 12, 2024, then the Interest Only Period shall automatically, with no further action required by the parties hereto, be extended through July 12, 2024.>~~

"Inventory" means all inventory in which a Borrower has or acquires any interest, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of a Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and such Borrower's Books relating to any of the foregoing.

"Investment" means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any investment, loan, advance or capital contribution or transfer of any assets through advances, equity positions, assumption of liabilities, acquisition of assets or other avenues to any Person.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, the Assignment of Deposit, the lockbox services agreement, any note or notes, documents or instruments executed by a Borrower, any guarantees, pledges or security agreements provided by third parties, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended or extended from time to time.

"Liquidity" means, as of any date of determination, the ~~<sum of (a) the>~~ aggregate balance of Cash maintained by Borrowers in account(s) with Bank on such date ~~<, plus (b) the amount of Borrowers' unused availability under the Revolving Line on such date>~~.

"Material Adverse Effect" means a material adverse effect on (i) the business operations or condition (financial or otherwise) of the Borrowers and their Subsidiaries taken as a whole or (ii) the ability of the Borrowers, taken as a whole, to repay the Obligations or otherwise perform their obligations under the Loan Documents to which they are a party or (iii) the enforceability or priority of Bank's security interests in the Collateral.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

~~<<“Net Income” means, as calculated on a consolidated basis for the Borrowers for any period as at any date of determination, the net profit (or loss), after provision for taxes, of the Borrowers for such period taken as a single accounting period.>~~

“Obligations” means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by a Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment Date” is the first (1st) calendar day of each month.

“Periodic Payments” means all installments or similar recurring payments that Borrowers may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between such Borrower and Bank.

“Permitted Discretion” means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Indebtedness” means:

- (a) Indebtedness of a Borrower in favor of Bank;
- (b) Indebtedness existing on the Closing Date and disclosed in the Schedule;
- (c) Indebtedness secured by a lien described in clause (c) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed \$250,000 in the aggregate at any given time;
- (d) Indebtedness to trade creditors incurred in the ordinary course of business, including Indebtedness incurred in the ordinary course of business with corporate credit cards not to exceed in aggregate \$75,000 at all times;
- (e) Indebtedness arising from the endorsement of instruments in the ordinary course of business;
- (f) intercompany Indebtedness owed by any Subsidiary that is a Borrower to another Borrower;
- (g) Indebtedness that also constitutes a Permitted Investment;

(h) Indebtedness arising from the honoring of a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business;

(i) Indebtedness owed to any Person (including obligations in respect of letters of credit for the benefit of such Person not exceeding \$75,000 at all times) providing workers' compensation, health, disability or other employee benefits or property, casualty, liability insurance, self-insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(j) Indebtedness in respect of netting services, overdraft protection and other similar arrangements in connection with deposit or securities accounts in the ordinary course of business;

(k) Indebtedness consisting of unsecured contingent liabilities arising with respect to customary indemnification provisions or deferred purchase price adjustments in connection with any Permitted Investment or in connection with any asset sale or other dispositions permitted hereunder;

(l) Indebtedness of up to \$500,000 consisting of installment payments or notes payable in connection with the licensing or acquisition of assets in the ordinary course of business;

(m) the Fortress Indebtedness, subject to Section 6.10 of this Agreement;

(n) Subordinated Debt;

(o) other unsecured Indebtedness not to exceed \$250,000 at any time; and

(p) (i) any Contingent Obligations in respect of Indebtedness otherwise permitted pursuant to clauses (a) through (o) above and (ii) the extension, renewal or refinancing of any Indebtedness described in clauses (a) through (o) above, provided that the principal amount of the Indebtedness being extended, renewed or refinanced does not increase.

“Permitted Investment” means:

(a) Investments existing on the Closing Date disclosed in the Schedule;

(b) Investments in deposit accounts maintained with Bank or otherwise permitted hereunder in the ordinary course of business;

(c) Cash Equivalents;

(d) Investments (including debt obligations) acquired in connection with the settlement of delinquent Accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

- (e) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;
- (f) Investments consisting of travel advances in the ordinary course of business;
- (g) joint ventures, strategic alliances, collaboration arrangements or nonexclusive or exclusive licensing arrangements in the ordinary course of a Borrower's business consisting of the non-exclusive or exclusive licensing of technology, the development of technology or the providing of technical support, in each case, that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States
- (h) Investments accepted in connection with Permitted Transfers;
- (i) Investments in newly-formed Subsidiaries, provided that each such Subsidiary becomes a Borrower promptly after its formation and executes such other documents as shall be reasonably requested by Bank;
- (j) acquisitions of licenses or sublicenses and similar arrangements for the use of Intellectual Property or other assets in the ordinary course of business in an aggregate amount not to exceed \$500,000 at any time outstanding;
- (k) Investments consisting of in-licensing of technology or products in the ordinary course of business;
- (l) loans or advances to partners, consultants and employees of a Borrower or any Subsidiary for relocation, entertainment, travel expenses, or similar expenditures (including payments of taxes) in an aggregate amount not to exceed \$100,000 at any time outstanding;
- (m) guarantees by a Borrower or any Subsidiary of a Borrower of leases (other than in relation to capital lease obligations), contracts, or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;
- (n) Investments consisting of endorsements for collection or deposit in the ordinary course of business;
- (o) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of Equity Interests of a Borrower pursuant to employee stock purchase plans or other similar agreements approved by such Borrower's Board of Directors; and

(p) other Investments in amounts not to exceed an aggregate of \$250,000 in any fiscal year, so long as not otherwise restricted or prohibited under any other Section of this Agreement.

“Permitted Liens” means the following:

(a) Any Liens existing on the Closing Date and disclosed in the Schedule or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank’s security interests;

(c) Liens (i) upon or in any equipment which was not financed by Bank acquired or held by a Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;

(d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other similar Liens arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings;

(e) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms;

(f) Easements, zoning restrictions, rights of way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property;

(g) Liens consisting of judgment or judicial attachment liens with respect to judgments the existence of which do not constitute an Event of Default;

(h) non-exclusive or exclusive licenses or sublicenses of Intellectual Property entered into in the ordinary course of business, in each case, that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;

(i) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets);

(j) utility and similar deposits in the ordinary course of business;

- (k) leasehold interests in leases or subleases;
- (l) Liens that are contractual rights of set off relating to agreements entered into by a Borrower in the ordinary course of business;
- (m) the interests of lessors under operating leases and non-exclusive licensors under license agreements;
- (n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due;
- (o) Liens that are subordinated to the Liens of Bank upon terms satisfactory to Bank in its reasonable discretion as long as no Default or Event Default has then occurred and is continuing or would result from any such action; and
- (p) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (o) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

“Permitted Transfer” mean:

- (a) sales of Inventory in the ordinary course of business;
- (b) non-exclusive or exclusive licenses and similar arrangements for the use of Intellectual Property in the ordinary course of business (including in the context of joint ventures, strategic alliances, collaboration arrangements or licensing arrangements) , in each case, that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;
- (c) dispositions of worn-out, obsolete or surplus equipment or assets in the ordinary course of business;
- (d) sales, transfers and other dispositions of accounts receivable (including write-offs, discounts and compromises) in connection with the compromise, settlement or collection thereof;
- (e) other transfers of assets having a fair market value of not more than \$250,000 in the aggregate in any fiscal year;
- (f) sales, transfers, leases and other dispositions of property to the extent that such property constitutes an Investment that is a Permitted Investment;
- (g) converting any Indebtedness to Equity Interests of a Borrower;

(h) leases or licenses or subleases or sublicenses entered into in the ordinary course of business (other than in respect of Intellectual Property);

(i) the abandonment or lapse of Intellectual Property that is no longer material to the business of the Borrowers or any Subsidiary, or otherwise no longer of material value, including, for the avoidance of doubt, the termination of license agreements and related agreements;

(j) any issuance or sale by a Borrower of its Equity Interests or other securities, in each case to the extent otherwise permitted pursuant to this Agreement;

(k) Permitted Liens;

(l) (i) dispositions of Cash Equivalents in the ordinary course of business made to a Person that is not an Affiliate of a Borrower and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(m) transfer of property from a Borrower or any Subsidiary to another Borrower; and

(n) transfers of cash pursuant to transactions not prohibited herein and in the ordinary course of business.

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

“Prime Rate” means the greater of (i) 3.25% and (ii) the variable rate of interest, per annum, that Bank announces from time to time as its prime rate, whether or not such announced rate is the lowest rate available from Bank.

“Projected Information” means, collectively, (i) the projected weekly operating cash receipts for each week, (ii) the projected weekly disbursements for each week, (iii) the projected net weekly cash flow for each week, (iv) the projected weekly net sales for each week, (v) the projected working capital roll-forward for each week (including underlying assumptions), (vi) the projected gross Eligible Accounts for each week, and (vii) such other information that Bank may reasonably request from time to time.

“Responsible Officer” means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer and the Controller of a Borrower.

“Revolving Facility” means the facility under which the Borrowers may request Bank to issue Advances, as specified in Section 2.1(a).

“Revolving Line” means a credit extension of up to ~~Ten Million~~ Zero Dollars (~~\$<10,000,000>~~ 0).

“Revolving Maturity Date” means ~~January 12~~ July 1, <2026>2024.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Schedule” means the schedule of exceptions attached hereto and approved by Bank, if any.

“Subordinated Debt” means any debt incurred by a Borrower that is subordinated to the debt owing by such Borrower to Bank on terms acceptable to Bank (and identified as being such by such Borrower and Bank), pursuant to a subordination agreement in form and substance reasonably satisfactory to Bank. For the avoidance of doubt, the Fortress Indebtedness shall not constitute Subordinated Debt.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries (including any Affiliate), or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of a Borrower.

“Term Loan” means, collectively, the term loans made under Section 2.1(b), consisting of Tranche I and Tranche II.

“Term Loan Maturity Date” means ~~January 12~~ July 1, <2026>2024.

“Third Amendment Date” means January 12, 2022.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of a Borrower connected with and symbolized by such trademarks.

“Tranche I” means one (1) term loan in the principal amount equal to Fifteen Million Dollars (\$15,000,000).

“Tranche II” means one (1) term loan in the principal amount equal to Five Million Dollars (\$5,000,000).

“Variance Report” means a detailed weekly variance report, in form and substance reasonably satisfactory to Bank, prepared by Borrower’s management, timely provided to Bank in accordance with Section 6.3 of the Loan Agreement, that (i) reconciles Borrower’s actual performance for the week ended the preceding Friday with Borrower’s projected performance for such week pursuant to the cash flow forecast under the Budget, which report shall include, without limitation, a detailed calculation of the variances between Borrower’s actual and projected disbursements, collections and other Projected Information, and (ii) includes a report from

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms "financial statements" shall include the notes and schedules thereto. Notwithstanding anything herein to the contrary, for purposes of representations, covenants and calculations made pursuant to the terms of this Agreement, GAAP will be deemed to treat operating leases and capital leases in a manner consistent with their current treatment under GAAP as in effect on December 31, 2019 with respect to the Borrowers, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

2. LOAN AND TERMS OF PAYMENT.

2.1 Credit Extensions. The Borrowers jointly and severally promise to pay to the order of Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to a Borrower hereunder. The Borrowers shall also pay interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

(a) Revolving Advances.

(i) Subject to and upon the terms and conditions of this Agreement, a Borrower may request Advances in an aggregate outstanding amount not to exceed the lesser of (i) the Revolving Line and (ii) the Borrowing Base. Subject to the terms and conditions of this Agreement, Advances may be repaid and reborrowed at any time prior to the Revolving Maturity Date, at which time all Advances shall be immediately due and payable. The Borrowers may prepay any Advances without penalty or premium.

(ii) Whenever the Borrowers desire an Advance, a Borrower will notify Bank by email or telephone no later than 11:00 a.m. Pacific Time, on the Business Day that is one day before the Business Day the Advance is to be made (and three (3) Business Days before the initial Advance). Each such notification shall be promptly confirmed by a Loan Paydown/Advance Request Form in substantially the form of Exhibit B. Bank is authorized to make Advances under this Agreement, based upon instructions received from a Responsible Officer or a designee of a Responsible Officer, or without instructions if in Bank's reasonable discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank may rely on any email or telephonic notice given by a person Bank reasonably believes to be a Responsible Officer or a designee thereof, and the Borrowers shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will credit the amount of Advances made under this Section to a Borrower's deposit account at Bank, as directed by such Borrower.

(b) **Term Loan.**

(i) Subject to and upon the terms and conditions of this Agreement, Bank shall make a Term Loan to Borrowers in an aggregate principal amount not to exceed Twenty Million Dollars (\$20,000,000), consisting of Tranche I and Tranche II, as follows: (i) Tranche I shall be funded on the Third Amendment Date, or as soon thereafter as all conditions precedent to the making thereof have been met, and (ii) Tranche II shall be available during the Draw Period. The proceeds of (A) Tranche I shall be used (y) to repay all refinance all existing Obligations owing from Borrowers to Bank under this Agreement as of the Third Amendment Date, and (z) for general working capital purposes (including permitted acquisitions and other transactions permitted hereby), and (B) Tranche II shall be used for general working capital purposes (including permitted acquisitions other transactions permitted hereby).

(ii) Interest shall accrue from the date that each Term Loan is made at the rate specified in Section 2.3(a), and shall be payable monthly beginning on the Payment Date immediately following the month in which such Term Loan is made, and continuing on each Payment Date thereafter. Borrowers shall repay the outstanding balance of each Term Loan ~~<in equal monthly installments of principal (determined based on the aggregate outstanding principal amount of each Term Loans on the Amortization Date)>~~, plus all accrued and unpaid interest ~~<, beginning on the Amortization Date and continuing on each Payment Date thereafter through>~~ thereon on the Term Loan Maturity Date, at which time all amounts due in connection with the Term Loan and any other amounts due under this Agreement shall be immediately due and payable. Borrowers may prepay all or any part of the Term Loan without penalty or premium, but may not reborrow any amount, once repaid.

2.2 Overadvances. If the aggregate amount of the outstanding Advances exceeds the lesser of the Revolving Line and the Borrowing Base at any time, the Borrowers shall immediately pay to Bank, in cash, the amount of such excess.

2.3 Interest Rates, Payments, and Calculations.

(a) **Interest Rates.**

(i) **Revolving Advances.** Except as set forth in Section 2.3(b), the Advances shall bear interest, on the outstanding Daily Balance thereof, at a floating rate equal to seven tenths of one percent (0.70%) above the Prime Rate.

(ii) **Term Loan.** Except as set forth in Section 2.3(b), the Term Loan shall bear interest, on the outstanding Daily Balance thereof, at a floating rate equal to one and seventy-three hundredths of one percent (1.73%) above the Prime Rate.

(b) **Late Fee; Default Rate.** If any payment is not made within ten (10) days after the date such payment is due, the Borrowers shall pay Bank a late fee equal to the lesser of (i) five percent (5%) of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All Obligations shall bear interest, from and after the

occurrence and during the continuance of an Event of Default, at a rate equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) **Payments.** Interest hereunder shall be due and payable on the last business day of each month during the term hereof, commencing on March 31, 2021. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of a Borrower's deposit accounts or against the Revolving Facility, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder. All payments shall be free and clear of any taxes, withholdings, duties, impositions or other charges, to the end that Bank will receive the entire amount of any Obligations payable hereunder, regardless of source of payment.

(d) **Lockbox; Collections.** The Borrowers shall cause all account debtors to pay any amounts owing to a Borrower made by wire, ACH, electronic funds transfer or other electronic payment method to such restricted account as Bank shall specify (the "Bancontrol Account"), and to mail all payments made by check to a post office box under Bank's control. All invoices shall specify such post office box address and Bancontrol Account information as the remit to and payment address for all Accounts. Bank shall have sole authority to collect such payments and deposit them to the Bancontrol Account. If a Borrower receives any amount despite such instructions, a Borrower shall immediately deliver such payment to Bank in the form received, except for an endorsement to the order of Bank and, pending such delivery, shall hold such payment in trust for Bank. Bank shall credit all amounts paid into the Bancontrol Account within two Business Days after clearance of any deposits to the Bancontrol Account to Borrower's operating account, provided however that Bank may, in its sole discretion, credit any amounts paid into the Bancontrol Account first against any amounts outstanding and owing to Bank under this Agreement, and then any remaining balance of such amount shall be credited to a Borrower's operating account. Borrowers shall enter into such lockbox agreement as Bank shall reasonably request from time to time. Each Borrower shall cause any third-party payment processors to execute and deliver an acknowledgment and payment direction letter in form and substance reasonably satisfactory to Bank. Bank may, at its option, conduct a credit check of the account debtor for each Eligible Account requested by a Borrower for inclusion in the Borrowing Base. During the existence of an Event of Default, Bank may also verify directly with the respective account debtors the validity, amount and other matters relating to the Eligible Accounts, and notify any account debtor of Bank's security interest in a Borrower's Accounts. Bank may verify invoices at its sole discretion and various forms of verification may be utilized by Bank, which could include the following: proof of delivery, time cards, matching purchase orders, or contracts to invoices, analyzing customer payment history, and direct telephonic or written confirmation with (or an acknowledgement and promise to pay from) account debtors.

(e) **Computation.** In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All

interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

2.4 Crediting Payments. Prior to the occurrence and continuance of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. During the existence of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 12:00 noon Pacific Time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Fees and Expenses.

(a) **Origination Fee.** The Borrowers shall pay to Bank the following: on the Closing Date, an origination fee with respect to the Revolving Facility equal to \$56,250, which shall be nonrefundable; and

(b) **Bank Expenses.** The Borrowers shall pay to Bank on the Closing Date, all Bank Expenses incurred through the Closing Date, including reasonable and documented attorneys' fees and expenses, in an amount not to exceed \$45,000, less any amounts paid specifically for Bank Expenses prior to the Closing Date, and, after the Closing Date, all Bank Expenses, including reasonable and documented attorneys' fees and expenses, as and when they are incurred by Bank.

2.6 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations (other than unasserted contingent indemnification obligations) remain outstanding or Bank has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Notwithstanding termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations (other than unasserted contingent indemnification obligations) are outstanding.

3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Bank to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:

- (a) this Agreement;
- (b) a certificate of the Secretary of each Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;
- (c) UCC National Form Financing Statements;
- (d) certificate(s) of insurance naming Bank as loss payee and additional insured;
- (e) payment of the fees and Bank Expenses then due specified in Section 2.5 hereof;
- (f) current financial statements of the Borrowers;
- (g) an audit of the Collateral, the results of which shall be reasonably satisfactory to Bank;
- (h) establishment of the Bancontrol Account and lockbox arrangements; and
- (i) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to all Credit Extensions. The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

- (a) timely receipt by Bank of the Payment/Advance Form and Borrowing Base Certificate, together with an aging of accounts receivable and payable, as provided in Section 2.1;
- (b) in Bank's sole discretion, there has not been a Material Adverse Effect;
- (c) with respect to Tranche II, evidence that Borrowers are in pro forma compliance with Section 6.9(a) hereof after giving effect to Tranche II; and
- (d) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of a Borrower's request for such Credit Extension and on the effective date of each Credit Extension as though made at and as of each such date (unless such representation or warranty specifically relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date), and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension. The making of each Credit Extension shall be deemed to be a representation and warranty by each Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. Each Borrower grants and pledges to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by the Borrowers of each of their respective covenants and duties under the Loan Documents. Such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof.

4.2 Delivery of Additional Documentation Required. Each Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all financing statements and other documents that Bank may reasonably request, in form reasonably satisfactory to Bank, to perfect and continue the perfection of Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

4.3 Right to Inspect and Audit. Borrowers shall permit any representative of Bank↔ during normal business hours and upon reasonable advance notice, to inspect, audit, examine and make extracts or copies from all books and records and other data relating to the Collateral to inspect any of a Borrower's properties, to confirm balances due on Accounts by direct inquiry to Account Debtors, and shall furnish Bank with all information regarding the business or finances of Borrower promptly upon Bank's request; provided the Borrowers shall only be obligated to reimburse Bank for the expenses, as determined by Bank in its good faith business judgment, for one (1) such field audit per year unless an Event of Default has occurred and is continuing.

5. REPRESENTATIONS AND WARRANTIES.

Each Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Such Borrower is a corporation duly existing under the laws of its state of incorporation and qualified and licensed to do business in any state in which the failure to be so qualified would result in a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within such Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in such Borrower's Certificate of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement to which such Borrower is a party or by which such Borrower is bound which would reasonably be expected to have a Material Adverse Effect. Such Borrower is not in default under any material agreement to which it is a party or by which it is bound.

5.3 No Prior Encumbrances. Such Borrower has good and marketable title to its property, free and clear of Liens, except for Permitted Liens.

5.4 Bona Fide Eligible Accounts. The Eligible Accounts are bona fide existing obligations. The property and services giving rise to such Eligible Accounts has been delivered or rendered to the account debtor or to the account debtor's agent for immediate and unconditional acceptance by the account debtor. Such Borrower has not received written notice of actual or imminent Insolvency Proceeding of any account debtor that is included in any Borrowing Base Certificate as an Eligible Account.

5.5 Merchantable Inventory. All Inventory is in all material respects of good and marketable quality, free from all material defects, except for Inventory for which adequate reserves have been made.

5.6 Intellectual Property. Such Borrower is the sole owner of its Intellectual Property, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business. Each of the Patents is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party. Except as set forth in the Schedule, such Borrower's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month during most recently ended fiscal quarter, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service.

5.7 Name; Location of Chief Executive Office. Except as disclosed in the Schedule, such Borrower has not done business under any name other than that specified on the signature page hereof; or, in the past five (5) years, changed its jurisdiction of formation, corporate structure, organizational type, or any organizational number assigned by its jurisdiction. The chief executive office of such Borrower is located at the address indicated in Section 10 hereof.

5.8 Litigation. Except as set forth in the Schedule, there are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency.

5.9 No Material Adverse Change in Financial Statements. All consolidated and consolidating financial statements related to the Borrowers and their Subsidiaries that Bank has received from the Borrowers fairly present in all material respects Borrower's financial condition as of the date thereof and Borrower's consolidated and consolidating results of operations for the period then ended. There has not been a material adverse change in the consolidated or the consolidating financial condition of the Borrowers and the Subsidiaries (taken as a whole) since the date of the most recent of such financial statements submitted to Bank.

5.10 Solvency, Payment of Debts. The fair salable value of the Borrowers' assets (including goodwill minus disposition costs), taken as a whole, exceeds the fair value of its liabilities; the Borrowers are not left with unreasonably small capital after the transactions in this Agreement; and the Borrowers are solvent and able to pay its debts (including trade debts) as they mature.

5.11 Regulatory Compliance. Such Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, and no event has occurred resulting from Borrower's failure to comply with ERISA that could result in Borrower's incurring material liability. Such Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Such Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Such Borrower and each Subsidiary have complied with all the provisions of the Federal Fair Labor Standards Act. Such Borrower and each Subsidiary have not violated any material statutes, laws, ordinances or rules applicable to it.

5.12 Environmental Condition. To such Borrower's best knowledge, none of such Borrower's properties or assets has ever been used by such Borrower, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; To such Borrower's best knowledge, none of such Borrowers' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by such Borrower which would reasonably be expected to have a Material Adverse Effect; and such Borrower has not received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by such Borrower resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

5.13 Taxes. Such Borrower has filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein.

5.14 Subsidiaries. Except as set forth on the Schedule, such Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.15 Government Consents. Such Borrower has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of such Borrower's business as currently conducted.

5.16 Operating, Depository and Investment Accounts. Except as disclosed in the Schedule, none of such Borrower's cash is maintained or invested with a Person other than Bank.

5.17 Full Disclosure. No representation, warranty or other statement made by the Borrowers in any certificate or written statement furnished to Bank, when taken as a whole,

contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading (it being recognized that projections and forecasts provided by the Borrowers in good faith and based upon reasonable assumptions are not viewed as facts and that the actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

6. **AFFIRMATIVE COVENANTS.**

Each Borrower shall do all of the following:

6.1 Good Standing. Maintain its corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which it is required under applicable law, and maintain in force all licenses, approvals and agreements, the loss of which would reasonably be expected to have a Material Adverse Effect.

6.2 Government Compliance. Meet the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, and comply with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which would reasonably be expected to have a Material Adverse Effect.

6.3 Financial Statements, Reports, Certificates; Other Notices and Information. Deliver the following to Bank:

(a) within thirty (30) days after the last day of each month, aged listings of accounts receivable and accounts payable, together with a deferred revenue listing and a Borrowing Base Certificate signed by a Responsible Officer in substantially the form of Exhibit C hereto;

(b) At Bank's request, information regarding status of any Acceptable Payoff Transaction or potential Acceptable Payoff Transaction;

(c) every Wednesday (commencing May 17, 2023), a Budget and corresponding Variance Report;

(d) ~~(b)~~ as soon as available, but in any event within thirty (30) days after the end of each month, a Borrower prepared consolidated balance sheet, income, and cash flow statement covering such Borrower's consolidated operations during such month, prepared in accordance with GAAP, consistently applied, in a form acceptable to Bank along with a Compliance Certificate signed by a Responsible Officer in substantially the form of Exhibit D ~~≤~~ >hereto;

(e) ~~(c)~~ as soon as available, but in any event within one hundred twenty (120) days after the end of such Borrowers' fiscal year, audited consolidated financial statements of such Borrower prepared in accordance with GAAP, consistently applied, together with an unqualified

opinion on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank;

~~(d) <as a condition to requesting an Advance, and for each month thereafter, as soon as available, but in any event within thirty (30) days after the last day of each month, a Borrowing Base Certificate and accounts receivable and payable agings;>~~

(f) [reserved];

(g) ~~(e)~~ within thirty (30) days after the last day of each month, bank statements for any bank in which Borrower maintains an account outside of Bank;

(h) ~~(f)~~ within thirty (30) days after the last day of such Borrower's fiscal year, a contact and address list in form and substance reasonably acceptable to Bank;

(i) ~~(g)~~ copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt and, if applicable, all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission;

(j) ~~(h)~~ promptly upon receipt of notice thereof, a report of any legal actions pending or threatened in writing against such Borrower or any Subsidiary that could result in damages or costs to such Borrower or any Subsidiary of Five Hundred Thousand Dollars (\$500,000) or more, or any commercial tort claim (as defined in the Code) acquired by such Borrower;

(k) ~~(i)~~ as soon as available, but in any event no later than the earlier of (i) sixty (60) days after the end of each fiscal year and (b) ten (10) days of approval by such Borrower's board of directors, annual operating projections (including income statements, balance sheets and cash flow statements presented in a monthly format) for the upcoming fiscal year, approved by such Borrower's board of directors, which shall be in form and substance reasonably satisfactory to Bank;

(l) ~~(j)~~ such other budgets, sales projections, operating plans, other financial information including information related to the verification of such Borrower's Accounts as Bank may reasonably request from time to time; and

(m) ~~(k)~~ promptly (and in any event within three (3) Business Days) upon such Borrower becoming aware of the existence of any Event of Default or event described in Section 8 which, with the giving of notice or passage of time, or both, would constitute an Event of Default, such Borrower shall give written notice to Bank of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.4 Audits. Upon reasonable advance notice and during normal business hours, permit Bank from time to time hereafter to audit such Borrower's Accounts and appraise Collateral

at such Borrower's expense, as determined by Bank in its good faith business judgment, provided the Borrowers shall only be obligated to reimburse Bank for the expenses, as determined by Bank in its good faith business judgment, for one (1) such field audit per year unless an Event of Default has occurred and is continuing.

6.5 Inventory; Returns. Keep all Inventory in good and marketable condition, free from all material defects except for Inventory for which adequate reserves have been made, maintain returns and allowances, if any, with account debtors on the same basis and in accordance with the usual customary practices of such Borrower, as they exist at the time of the execution and delivery of this Agreement, and promptly notify Bank of all returns and recoveries and of all disputes and claims, where the return, recovery, dispute or claim involves more than Two Hundred Fifty Thousand Dollars (\$250,000).

6.6 Taxes. Make due and timely payment or deposit of all federal, state, and other taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and make, and will cause each Subsidiary to make, timely payment or deposit of all tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that such Borrower has made such payments or deposits; provided that such Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by such Borrower.

6.7 Insurance.

(a) At its expense, keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where such Borrower's business is conducted on the date hereof, and also maintain insurance relating to such Borrower's business, ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to such Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form reasonably satisfactory to Bank, showing Bank as an additional loss payee thereof, and all liability insurance policies shall show the Bank as an additional insured and shall specify that the insurer must give at least twenty (20) days' notice to Bank before canceling its policy for any reason (or ten (10) days' notice in the case of the failure to pay any premiums) . Upon Bank's reasonable request, such Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Bank, be payable to Bank to be applied on account of the Obligations; provided that Borrowers may retain property

insurance proceeds in the aggregate amount not to exceed 250,000 in any fiscal year, which Borrowers shall apply toward the replacement or repair of destroyed or damaged property.

6.8 Operating, Depository and Investment Accounts. Beginning not later than 180 days after the Closing Date, maintain its primary depository, operating, and investment accounts with Bank. Beginning on the Closing Date, for each account that such Borrower maintains outside of Bank, such Borrower shall cause the applicable bank or financial institution at or with which any such account is maintained to execute and deliver an account control agreement or other appropriate instrument in form and substance reasonably satisfactory to Bank.

~~6.9 <Financial Covenants. Maintain at all times, subject to periodic reporting as of the last day of each month, on a consolidated basis with respect to Borrowers and their Subsidiaries:>~~

~~(a) <Collateral Ratio. From the Third Amendment Date through the date that is eighteen (18) months thereafter, a ratio of (i) Collateral Value to (ii) the sum of (A) the aggregate amount outstanding under the Term Loan, plus (B) the Revolving Line equal to at least 1.25 to 1.00, provided that Borrowers shall at all times maintain an aggregate Cash balance in account(s) with Bank equal to at least the lesser of (y) fifty percent (50%) of the Collateral Value, and (z) the aggregate amount outstanding under the Term Loan.>~~

6.9 (b) Minimum Liquidity. <At> Maintain at all times <beginning on the date that is eighteen (18) months after the Third Amendment Date>, Liquidity in an aggregate amount equal to at least <Seven> Eight Million Seven Hundred Fifty Thousand Dollars (\$8,750,000) (or, if the Obligations have not been repaid in full in cash on or before August 31, 2023, Ten Million Dollars (\$<7,000,000>), provided that Borrowers shall at all times maintain an aggregate Cash balance in account(s) with Bank equal to at least Five Million Dollars (\$5,000,000).> 10,000,000) from September 1, 2023 and at all times thereafter), all of which shall be held in deposit accounts of one or more Borrowers maintained with Bank and are subject to the Assignment of Deposit or another assignment of deposit in substantially the same form or otherwise in form and substance reasonably satisfactory to Bank.

~~(e) <Fixed Charge Coverage Ratio. At all times beginning on the date that is eighteen (18) months after the Third Amendment Date, a Fixed Charge Coverage Ratio equal to at least 1.25 to 1.00.>~~

6.10 Fortress Loan. As a condition to making any payment <to>by Parent under the Fortress Note, cause all amounts owing to Bank under this Agreement to be repaid in full.

6.11 Intellectual Property Rights. Protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Bank in writing of material infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to such Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

6.12 Formation or Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, within thirty (30) days following such Borrower forming or acquiring any direct or indirect Subsidiary, (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder, together with such appropriate financing statements and/or control agreements, all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary that would constitute Collateral), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance reasonably satisfactory to Bank that in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above.

6.13 Further Assurances. At any time and from time to time, execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

6.14 Acceptable Payoff Transaction. Borrowers shall diligently pursue (giving due consideration to market conditions) an equity or debt capital raise, merger or sale of substantially all of the assets of or equity interests issued by the Borrowers or other transaction, in each case, that would raise proceeds sufficient, when taken together with Liquidity, to cause the payment in full of the Obligations on or prior to the Term Loan Maturity Date (an "Acceptable Payoff Transaction").

6.15 Patriot Act, Bank Secrecy Act and Office of Foreign Assets Control. As required by federal law and Bank's policies and practices, Bank may need to obtain, verify and record certain customer identification information and documentation in connection with opening or maintaining accounts or establishing or continuing to provide services and each Borrower agrees, and shall cause each of its Subsidiaries to provide such information. In addition, and without limiting the foregoing sentence, each Loan Party shall not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and comply, and cause each Subsidiary to comply, with all applicable Bank Secrecy Act (P.L. 91-508, 84 Stat. 118) (1970) (the "BSA") and the PATRIOT Act and any regulations under the BSA or the PATRIOT Act.

7. **NEGATIVE COVENANTS.**

No Borrower may do any of the following:

7.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer") all or any part of its business or property (including any spinoffs or divisions), other than Permitted Transfers.

7.2 Change in Business. Engage in any business other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto); experience a change in a Chief Executive Officer or Chief Financial Officer unless a replacement reasonably acceptable to Bank is appointed within six (6) months of such officer no longer serving in such position; cease to conduct business in the manner that is not reasonably complementary, ancillary or otherwise related to the nature of the business operations conducted by Borrower as of the Closing Date; change the date on which its fiscal year ends; or without thirty (30) days prior written notification to Bank, change its type of corporate form of entity, relocate its chief executive office or state of incorporation or change its legal name.

7.3 Mergers or Acquisitions or Change in Control. Suffer or permit a Change in Control; or merge or consolidate, with or into any other business organization, or acquire, or permit any of its Subsidiaries to acquire, all or a material part of the capital stock or assets of another Person, or the product line or division of another Person, other than mergers or consolidations (i) of a Subsidiary which is not a Borrower into another Subsidiary or into Borrower, (ii) of a Borrower into another Borrower or (iii) to effectuate a Permitted Investment, provided that after giving effect to any of such transactions, Borrowers on a consolidated basis shall be in compliance with this Agreement.

7.4 Indebtedness. Create, incur, guarantee, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

7.5 Encumbrances. Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, except for Permitted Liens, or enter into any agreement with any Person other than Bank not to grant a security interest in, or otherwise encumber, any of the Collateral or Intellectual Property (other than (a) restrictions or limitations imposed by any agreement relating to Permitted Liens if such restrictions or limitations apply only to the property or assets that are the subject of such Permitted Lien and (b) customary provisions in leases or licenses restricting the assignment thereof).

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock (other than in capital stock) at any time that an Event of Default is continuing or would exist after giving effect to such payment or distribution.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, other than Permitted Investments; or, subject to Section 6.8, maintain or invest any of its property with a Person other than Bank or permit any of its Subsidiaries to do so unless such Person has entered into an account control agreement with Bank in form and substance reasonably satisfactory to Bank.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of such Borrower except for (a) transactions that are in the ordinary course of such Borrower's business, upon fair and reasonable terms that are no

less favorable to such Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions between or among the Borrowers not involving any other Affiliate, (c) loans or advances to employees, officers and directors otherwise constituting a Permitted Investment, (d) so long as it has been approved by such Borrower's board of directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation (including bonuses and the issuance of stock options), severance, or employee benefit arrangements to employees, officers, and directors of such Borrower in the ordinary course of business, (e) any tax sharing arrangements entered into in the ordinary course of business and (f) transactions set forth on the Schedule, as those agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time.

7.9 Subordinated Debt. Make any payment in respect of any Subordinated Debt, except in compliance with the terms of the subordination agreement applicable to such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.10 [Reserved].

7.11 Compliance. Become an "investment company" or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could have a Material Adverse Effect.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by the Borrowers under this Agreement:

8.1 Payment Default. If a Borrower fails to pay, when due, any of the Obligations;

8.2 Covenant Default.

(a) If a Borrower fails to perform or observe any term, covenant or agreement contained (i) in Sections 6.1, 6.3, 6.4, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12 or Article VII;

(b) If a Borrower fails to perform or observe any other material term, provision, condition, or covenant contained in this Agreement or in any of the Loan Documents, or in any other present or future agreement between a Borrower and Bank and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within ten days after a Borrower receives notice thereof or any officer of a Borrower becomes aware

thereof; provided, however, that if the default cannot by its nature be cured within the ten day period or cannot after diligent attempts by such Borrower be cured within such ten day period, and such default is likely to be cured within a reasonable time, then such Borrower shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made;

8.3 Material Adverse Effect. If there occurs any circumstance or circumstances that could reasonably be expected to have a Material Adverse Effect;

8.4 Attachment. If any portion of a Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity, or if a Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any portion of a Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of a Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by a Borrower;

8.5 Insolvency. If a Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against a Borrower; provided however, that such Borrower, as applicable, shall have forty-five (45) days to obtain the dismissal or discharge of an Insolvency Proceeding filed commenced it;

8.6 Other Agreements. If a Borrower is in breach of any agreement (i) relating to any Indebtedness in an amount in excess of Five Hundred Thousand (\$500,000) to which a Borrower is a party (which breach remains uncured after the applicable grace or notice period, if any) resulting in a right by a third party or parties, whether or not exercised, to accelerate the maturity of any such Indebtedness or (ii) that would reasonably be expected to have a Material Adverse Effect;

8.7 Judgments; Settlements; Fines; Penalties. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand (\$500,000) shall be rendered against a Borrower, or if a Borrower enters into any settlement agreement with respect to any litigation matters that results in payment obligations or liabilities incurred by such Borrower in excess of Five Hundred Thousand (\$500,000); or if one or more fines, penalties or orders or decrees for the payment of money in excess of Five Hundred Thousand (\$500,000) shall be rendered against a Borrower by any governmental authority; in each case, excluding amounts covered by insurance to the extent the relevant independent third party insurer has provided coverage therefor and to the extent the foregoing shall remain unsatisfied and unstayed for a period of thirty(30) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment, settlement, fine, penalty or orders or decree); or

8.8 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any other Loan Document or certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

9. **BANK'S RIGHTS AND REMEDIES.**

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by the Borrowers:

(a) Declare all or any portion of the Obligations, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of a Borrower under this Agreement or under any other agreement between a Borrower and Bank;

(c) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. The Borrowers shall assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. The Borrowers authorize Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, the Borrowers grant Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(d) Set off and apply to the Obligations any and all (i) balances and deposits of a Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of a Borrower held by Bank;

(e) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, a Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, a Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(f) Dispose of the Collateral by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including a Borrower's premises) as Bank

determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate;

(g) Bank may credit bid and purchase at any public sale; and

(h) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by the Borrowers.

9.2 Power of Attorney. Effective only upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably appoints Bank (and any of Bank's designated officers, or employees) as such Borrower's true and lawful attorney to: (a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) notify all account debtors with respect to the Accounts or any other debtors of a Borrower to pay Bank directly; (c) sign a Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) make, settle, and adjust all claims under and decisions with respect to a Borrower's policies of insurance; (e) demand, collect, receive, sue, and give releases to any account debtor or other debtor of a Borrower for the monies due or which may become due upon or with respect to the Accounts and to compromise, prosecute, or defend any action, claim, case or proceeding relating to the Accounts; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; (g) sell, assign, transfer, pledge, compromise, discharge or otherwise dispose of any Collateral; (h) receive and open all mail addressed to a Borrower for the purpose of collecting the Accounts; (i) endorse a Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (j) execute on behalf of a Borrower any and all instruments, documents, financing statements and the like to perfect Bank's interests in the Accounts and file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; and (k) do all acts and things necessary or expedient, in furtherance of any such purposes; provided however Bank may exercise such power of attorney with respect to any actions described in clause (j) above, regardless of whether an Event of Default has occurred. The appointment of Bank as a Borrower's attorney in fact, and each of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions hereunder is terminated.

9.3 Accounts Collection. In addition to the foregoing, at any time after the occurrence and during the continuance of an Event of Default, Bank may notify any Person owing funds to a Borrower of Bank's security interest in such funds and verify the amount of such Account. Each Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If a Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following: (a) make payment of the same or any

part thereof; (b) set up such reserves under the Revolving Line as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.7 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

9.5 Bank's Liability. So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by the Borrowers. Bank shall in no case be liable for special, consequential or punitive damages arising out of this Agreement or any transactions contemplated by this Agreement.

9.6 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

9.7 Demand; Protest. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which a Borrower may in any way be liable.

10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by email to Borrower or to Bank, as the case may be, at its addresses set forth below:

If to a Borrower:

c/o JOURNEY MEDICAL CORPORATION
9237 East Via de Ventura
Scottsdale, AZ 85258

Attn: Claude Maraoui
Nirav Jhaveri
[Email: cmaraoui@jmcderm.com](mailto:cmaraoui@jmcderm.com) njhaveri@jmcderm.com

and

c/o FORTRESS BIOTECH, INC.
2 Gansevoort Street, 9th Floor
New York, NY 10014
Attn: Robyn Hunter, CFO and Sam Berry, General Counsel

[Email: rhunter@fortressbiotech.com](mailto:rhunter@fortressbiotech.com); sberry@fortressbiotech.com

With a copy to (which copy shall not constitute notice):

Sidley Austin LLP
One South Dearborn
Chicago, IL
60603 Attn: Allison Satyr
[Email: asatyr@sidley.com](mailto:asatyr@sidley.com)

If to Bank:

EAST WEST BANK
2350 Mission College Boulevard, Suite 988
Santa Clara, CA 95054
Attn: James Tai
[Email: james.tai@eastwestbank.com](mailto:james.tai@eastwestbank.com)

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Jurisdiction shall lie in the State of California. BANK AND EACH BORROWER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THEM, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN

MODIFIED IN ANY RESPECT OR RELINQUISHED BY BANK OR BORROWER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge who shall be a retired state or federal court judge, mutually selected by the parties (or, if they cannot agree, then any party may seek to have a private judge appointed in accordance with California Code of Civil Procedure Sections 638 and 640 by the Presiding Judge of the Los Angeles County, California Superior Court) appointed in accordance with California Code of Civil Procedure <Section>Sections 638 and 640 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Los Angeles County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Los Angeles County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph. The parties agree that time is of the essence in conducting the referenced proceedings. The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of the dispute or controversy in accordance with the terms hereof. The costs shall be borne equally by the parties.

12. GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by a Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank may without the consent of or notice to a Borrower sell, transfer, negotiate, or grant participation

in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder; provided that so long as no Event of Default has occurred and is continuing Bank may not assign, transfer or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder or any other Loan Documents to any Person who is (i) direct competitor of Borrower, whether as an operating company or direct or indirect parent with voting control over such operating company, or (ii) a vulture or distressed debt fund.

12.2 Indemnification. The Borrowers shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and a Borrower whether under this Agreement, or otherwise (including without limitation reasonable and documented attorneys' fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. Neither this Agreement nor the Loan Documents can be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the Loan Documents, if any, are merged into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement and any other Loan Document and any amendments, renewals, extensions, modifications, or refinancings thereof may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement ~~<In the event that any>~~ or Loan Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any ~~<other>~~ Loan Document and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be. As used herein, "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record. If any signature is delivered by facsimile transmission or by <e-mail>email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing this Agreement or any other Loan Document (or on whose behalf such signature is executed) with the

same force and effect as if such facsimile or “.pdf” signature page were an original ~~hereof. Notwithstanding the foregoing, the Borrowers shall deliver all original signed documents requested by Bank no later than ten (10) Business Days following the Closing Date.~~ hereof or thereof.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations (other than unasserted contingent indemnification obligations) remain outstanding or Bank has any obligation to make Credit Extensions to a Borrower. The obligations of the Borrowers to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Confidentiality. In handling any confidential information, Bank will exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made (a) to Bank’s subsidiaries or affiliates in connection with their business with a Borrower (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to prospective transferees or purchasers of any interest in the loans (provided, however, Bank shall use commercially reasonable efforts in obtaining such prospective transferee or purchasers agreement of the terms of this provision or terms substantially similar to the terms of this provision), (c) as required by law, regulation, subpoena, or other order, (d) to Bank’s regulators or as otherwise required in connection with Bank’s examination or audit (in which case such Person agrees, to the extent permitted by applicable law, to use commercially reasonable efforts to inform the Borrowers thereof prior to such disclosure), (e) as Bank considers appropriate exercising remedies under this Agreement and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is in the public domain or in Bank’s possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank or (y) is disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

12.9 Patriot Act Notice. Bank notifies the Borrowers that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the “Patriot Act”), it is required to obtain, verify and record information that identifies a Borrower, which information includes names and addresses and other information that will allow Bank to identify a Borrower in accordance with the Patriot Act. Borrower shall, promptly following a request by Bank, provide all documentation and other information that Bank requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act. Lender will require Borrowers to provide identifying information about each beneficial owner and/or individuals who have significant responsibility to control, manage or direct the legal entity.

13. CO-BORROWER PROVISIONS.

13.1 Primary Obligation. This Agreement is a primary and original obligation of each Borrower and shall remain in effect notwithstanding future changes in conditions, including any change of law or any invalidity or irregularity in the creation or acquisition of any Obligations or in the execution or delivery of any agreement between Bank and any Borrower. Each Borrower shall be liable for existing and future Obligations as fully as if all of all Credit Extensions were advanced to such Borrower. Bank may rely on any certificate or representation made by any Borrower as made on behalf of, and binding on, all Borrowers.

13.2 Enforcement of Rights. The Borrowers are jointly and severally liable for the Obligations and Bank may proceed against one or more of the Borrowers to enforce the Obligations without waiving its right to proceed against any of the other Borrowers.

13.3 Borrowers as Agents. Each Borrower appoints the other Borrower as its agent with all necessary power and authority to give and receive notices, certificates or demands for and on behalf of both Borrowers, to act as disbursing agent for receipt of any Credit Extensions on behalf of each Borrower and to apply to Bank on behalf of each Borrower for Credit Extensions, any waivers and any consents. This authorization cannot be revoked, and Bank need not inquire as to each Borrower's authority to act for or on behalf of the Borrowers.

13.4 Subrogation and Similar Rights. Notwithstanding any other provision of this Agreement or any other Loan Document, until the Obligations have been repaid in full, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating such Borrower to the rights of Bank under the Loan Documents) to seek contribution, indemnification, or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by such Borrower with respect to the Obligations in connection with the Loan Documents or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by such Borrower with respect to the Obligations in connection with the Loan Documents or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 13.4 shall be null and void. If any payment is made to a Borrower in contravention of this Section 13.4, such Borrower shall hold such payment in trust for Bank and such payment shall be promptly delivered to Bank for application to the Obligations, whether matured or unmatured.

13.5 Waivers of Notice. To the maximum extent permitted by applicable law, each Borrower waives any defense arising from any defense of any other Borrower, or by reason of the cessation from any cause whatsoever of the liability of any other Borrower. Bank's failure at any time to require strict performance by any Borrower of any provision of the Loan Documents shall not waive, alter or diminish any right of Bank thereafter to demand strict compliance and performance therewith. Nothing contained herein shall prevent Bank from foreclosing on the Lien of any deed of trust, mortgage or other security instrument, or exercising any rights available thereunder, and the exercise of any such rights shall not constitute a legal or equitable discharge

of any Borrower. To the maximum extent permitted by applicable law, each Borrower also waives any defense arising from any act or omission of Bank that changes the scope of such Borrower's risks hereunder.

13.6 Subrogation Defenses. To the maximum extent permitted by applicable law, each Borrower hereby waives any defense based on impairment or destruction of its subrogation or other rights against any other Borrower, and under any other similar statutes now and hereafter in effect.

13.7 Right to Settle, Release.

(a) The liability of the Borrowers hereunder shall not be diminished by (i) any agreement, understanding or representation that any of the Obligations is or was to be guaranteed by another Person or secured by other property, or (ii) any release or unenforceability, whether partial or total, of rights, if any, which Bank may now or hereafter have against any other Person, including another Borrower, or property with respect to any of the Obligations.

(b) Without affecting the liability of any Borrower hereunder, Bank may (i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Obligations with respect to a Borrower, (ii) grant other indulgences to a Borrower in respect of the Obligations, (iii) modify in any manner any documents relating to the Obligations with respect to the other Borrower, (iv) release, surrender or exchange any deposits or other property securing the Obligations, whether pledged by a Borrower or any other Person, or (v) compromise, settle, renew, or extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any guarantor, endorser or other Person who is now or may hereafter be liable with respect to any of the Obligations.

13.8 Subordination. All Indebtedness of a Borrower now or hereafter arising and held by another Borrower is subordinated to the Obligations and the Borrower holding such Indebtedness shall take all actions reasonably requested by Bank to effect, to enforce and to give notice of such subordination.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

JOURNEY MEDICAL CORPORATION

By: _____
Name: _____
Title: _____

JG PHARMA, INC.

By: _____
Name: _____
Title: _____

EAST WEST BANK

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO LOAN AND SECURITY AGREEMENT]



DEBTORS: JOURNEY MEDICAL CORPORATION
JG PHARMA, INC.

SECURED PARTY: EAST WEST BANK

EXHIBIT A

**COLLATERAL DESCRIPTION ATTACHMENT
TO LOAN AND SECURITY AGREEMENT**

EXHIBIT B

LOAN ADVANCE/PAYDOWN REQUEST FORM

**EXHIBIT D
COMPLIANCE CERTIFICATE**



Exhibit A

[attached]

DEBTORS: JOURNEY MEDICAL CORPORATION
JG PHARMA, INC.

SECURED PARTY: EAST WEST BANK

EXHIBIT A

**COLLATERAL DESCRIPTION ATTACHMENT
TO LOAN AND SECURITY AGREEMENT**



Exhibit B

[attached]

**EXHIBIT D
COMPLIANCE CERTIFICATE**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO RULES 13A-14(A) AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Claude Maraoui, certify that:

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

/s/ Claude Maraoui

Claude Maraoui

President and Chief Executive Officer

(Principal Executive Officer)

August 10, 2023

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO RULES 13A-14(A) AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joseph Benesch certify that:

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

/s/ Joseph Benesch

Joseph Benesch
Interim Chief Financial Officer
(Principal Financial Officer)
August 10, 2023

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Claude Maraoui, President and Chief Executive Officer of Journey Medical Corporation (the “Company”), in compliance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, hereby certify that, to the best of my knowledge, the Company’s quarterly report on Form 10-Q for the period ended June 30, 2023 (the “Report”) filed with the Securities and Exchange Commission:

- Fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Claude Maraoui

Claude Maraoui
President and Chief Executive Officer
(Principal Executive Officer)
August 10, 2023

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joseph Benesch, Interim Chief Financial Officer of Journey Medical Corporation (the “Company”), in compliance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, hereby certify that, to the best of my knowledge, the Company’s quarterly report on Form 10-Q for the period ended June 30, 2023 (the “Report”) filed with the Securities and Exchange Commission:

- Fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joseph Benesch

Joseph Benesch
Interim Chief Financial Officer
(Principal Financial Officer)
August 10, 2023
