Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

THRESHOLD PHARMACEUTICALS, INC.

(Exact Name of Corporation as Specified in Its Charter)

951 Gateway Boulevard
South San Francisco, CA 94080-7024
(650) 553-8900
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Delaware	2834	94-3409596
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

Harold E. Selick, Ph.D.
Chief Executive Officer
951 Gateway Boulevard
South San Francisco, California 94080-7024
Telephone: (650) 553-8900
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(Name, address, including zip code, and telephone number, including area code, of agent for service)

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APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(1)
Shares of Common Stock, par value $0.001 per share	$ 86,250,000	$ 10,927.88

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED , 2004

THRESHOLD PHARMACEUTICALS, INC.

COMMON STOCK

Threshold Pharmaceuticals, Inc. is offering shares of common stock in a firmly underwritten offering. This is our initial public offering, and no public market currently exists for our shares. We anticipate that the initial public offering price will be between $ and $ per share. After the offering, the market price for our shares may be outside this range.

We have applied to list our common stock on the NASDAQ National Market under the symbol "THLD."

Investing in our common stock involves a high degree of risk. See " Risk Factors" beginning on page 7.

	Per Share	Total
Offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds to Threshold Pharmaceuticals, Inc., before offering costs	$	$

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful and complete. Any representation to the contrary is a criminal offense.

We have granted the underwriters an option to purchase up to additional shares of our common stock to cover over-allotments, if any, within 30 days from the date of this prospectus. The underwriters expect to deliver the shares of common stock to our investors on or about , 2004.

Banc of America Securities LLC **CIBC World Markets**

Lazard **William Blair & Company**

, 2004

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You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with different information. We are not making an offer of these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in this prospectus is accurate as of the date on the front of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus that we believe is most important to understanding how our business is currently being conducted. You should read the entire prospectus before making an investment decision.

Overview

We are a biotechnology company focused on the discovery, development and commercialization of small molecule therapeutics based on Metabolic Targeting™, an approach that targets fundamental differences in metabolism between normal and certain diseased cells. We are building a pipeline of drugs that are designed to selectively target tumor cells so that the drugs are less toxic to healthy tissues than conventional drugs, thereby providing improvements over current therapies.

Our initial clinical focus is the treatment of cancer and benign prostatic hyperplasia, or BPH, a disease characterized by overgrowth of the prostate. Our lead product candidate, glufosfamide, has completed Phase 1 and Phase 2 clinical trials in patients with various solid tumors. We expect to initiate a pivotal Phase 3 clinical trial of glufosfamide for the second-line treatment of pancreatic cancer in the second half of 2004. TH-070, our product candidate for the treatment of BPH, is in a Phase 2 clinical trial. 2-deoxyglucose, or 2DG, our product candidate for the treatment of solid tumors, is being evaluated in a Phase 1 clinical trial as a combination therapy. We are also working to discover novel drug candidates that are activated under the metabolic conditions typical of cancer cells, and we have identified lead compounds with promising *in vitro* data.

Metabolic Targeting

Metabolic Targeting is a therapeutic approach that targets fundamental differences in energy metabolism between normal and certain diseased cells. These diseased cells rely predominantly on glycolysis, a process of glucose metabolism, to generate the energy needed to survive. As a consequence, these cells consume more glucose than do normal cells. In cancer, this increased consumption of glucose has two causes: the process of a normal cell becoming a rapidly dividing cancer cell; and the exposure of a cell to the low oxygen, or hypoxic, conditions within those regions of most solid tumors where cells are dividing slowly. When these cells shift energy production to glycolysis, they must increase the levels of the proteins needed to transport and metabolize glucose. Similarly, cells in BPH rely predominantly on glycolysis for energy production. Metabolic Targeting takes advantage of these metabolic differences to selectively target these diseased cells.

For the treatment of cancer, we believe that our product candidates based on Metabolic Targeting can be broadly applied to the treatment of most solid tumors and have the potential to significantly increase the effectiveness of existing therapies. Metabolic Targeting provides the opportunity to treat not only rapidly dividing tumor cells, which are targeted by chemotherapy and radiation, but also slowly dividing tumor cells that generally evade these traditional therapies and ultimately contribute to relapse. For BPH, we believe that Metabolic Targeting will enable us to develop a new class of drugs to treat the disease more rapidly and effectively, with fewer side effects than current therapies. We believe that our focus on Metabolic Targeting, combined with our expertise in medicinal chemistry and drug development, provides us with the capability to identify, discover and develop novel therapies.

Glufosfamide

Our lead product candidate, glufosfamide, is a small molecule in clinical development for the treatment of pancreatic cancer. We are developing glufosfamide as an intravenous single agent for the second-line treatment of metastatic pancreatic cancer, and in combination with Gemzar® (gemcitabine) for the first-line treatment of

inoperable locally advanced or metastatic pancreatic cancer. First-line treatment means the patient has not been previously treated with chemotherapy. Second-line treatment means the patient has been previously treated with one regimen of chemotherapy. In the second half of 2004, we plan to initiate a randomized, multi-center, open-label pivotal Phase 3 trial of glufosfamide for the treatment of patients with metastatic pancreatic cancer who have failed treatment with Gemzar. This trial will compare the survival of patients treated with glufosfamide to patients who receive best supportive care. As part of our registration and approval strategy we also plan to initiate, before the end of 2004, a Phase 2 trial to evaluate various doses of glufosfamide in combination with Gemzar for the first-line treatment of advanced pancreatic cancer patients. We are developing glufosfamide for pancreatic cancer based on activity seen in previous clinical trials, a known increase in glucose uptake in pancreatic cancer cells and the extreme hypoxia in tumors of this type.

Glufosfamide has been evaluated in two Phase 1 and five Phase 2 clinical trials that together enrolled over 200 patients with a variety of advanced-stage cancers. In the Phase 2 trials, glufosfamide showed activity against breast, colon, non-small cell lung and pancreatic cancers, but not glioblastoma. In a 34-patient Phase 2 trial of patients with advanced pancreatic cancer, overall median survival with glufosfamide was estimated at 5.6 months, and two-year survival was estimated at 9%. In the Phase 1 and Phase 2 trials, glufosfamide was generally well tolerated, with few drug-related serious adverse events. The safety and efficacy of glufosfamide to treat pancreatic cancer will need to be demonstrated in a pivotal Phase 3 program before we can receive marketing approval from the United States Food and Drug Administration, or the FDA, or foreign regulatory agencies.

TH-070

TH-070, our product candidate for the treatment of BPH, is in a Phase 2 trial. TH-070 is an orally administered small molecule that inactivates the enzyme that catalyzes the first step in glycolysis. We are developing TH-070 for BPH based on our understanding that prostate cells rely predominantly on glycolysis for energy production, as well as published animal efficacy data and human clinical data demonstrating tolerability.

TH-070 offers the potential to treat BPH via a novel mechanism, by reducing the prostate size through Metabolic Targeting. By directly inhibiting glycolysis in prostate cells, we expect TH-070 to reduce the size of the prostate more rapidly than current medical treatments, without the attendant side effects, which include decreased libido, impotence and cardiovascular effects.

In January 2004, we initiated a Phase 2 clinical trial to evaluate the safety of TH-070 in patients with symptomatic BPH. Our major objective of this initial study is to determine the tolerability of TH-070 in patients with BPH. In addition, patients will be evaluated for specific efficacy parameters that have been used as efficacy endpoints in previous clinical trials that led to FDA approval of other BPH drugs. We expect the initial results of this trial to become available near the end of 2004. If we obtain promising data from this trial, we intend to initiate a registrational program of TH-070 for BPH in 2005.

2-Deoxyglucose (2DG)

2DG, our product candidate for the treatment of solid tumors, is in a Phase I trial. 2DG is an orally administered small molecule that employs Metabolic Targeting to treat solid tumors by directly inhibiting glycolysis, the major source of energy production in these tissues. Because tumor cells in general, and those in hypoxic zones in particular, are dependent on glycolysis for survival, tumor cells are particularly sensitive to the effect of 2DG. We are conducting a Phase 1 trial of daily 2DG as a single agent and in combination with Taxotere® (docetaxel) to evaluate the safety, pharmacokinetics and maximum tolerated dose in patients with solid tumors. We plan to conduct a Phase 1 trial of a single dose of 2DG to evaluate its effect on prostate metabolism. We are developing 2DG based on its specificity for targeting tumor cells and extensive human safety data, as well as recently demonstrated animal efficacy that we and our collaborators published in *Cancer Research* in January 2004.

Our Strategy

Our goal is to create a leading biotechnology company that develops and commercializes drugs based on Metabolic Targeting, with an initial focus on cancer and BPH. Key elements of our strategy are to:

- Develop glufosfamide, TH-070 and 2DG successfully;
- Continue to broaden our pipeline by identifying, discovering and developing new compounds;
- Build on our expertise in Metabolic Targeting through continued research in cellular metabolism; and
- Develop sales and marketing capabilities in select cancer markets.

In executing our business strategy, we face significant risks and uncertainties, which are highlighted in the section entitled "Risk Factors." We are a development stage company and have a limited operating history. We have experienced operating losses since our inception, and we expect to incur significantly greater operating losses for the next several years as we advance our clinical development programs. None of our product candidates have been approved for sale by the FDA, and we have not generated any revenue since our inception. If we are unable to develop, receive regulatory approval for and successfully commercialize any of our product candidates, we will be unable to generate significant revenues, and we may never become profitable.

Our Corporate Information

We were incorporated in Delaware on October 17, 2001. Our principal executive offices are located at 951 Gateway Boulevard, South San Francisco, California, 94080-7024. Our telephone number is (650) 553-8900. Our website is located at *www.thresholdpharm.com*. Information contained on, or that can be accessed through, our website is not part of this prospectus.

Unless the context requires otherwise, in this prospectus the terms "Threshold Pharmaceuticals," "we," "us" and "our" refer to Threshold Pharmaceuticals, Inc. Threshold Pharmaceuticals, Inc., our logo and Metabolic Targeting are our trademarks. Other trademarks, trade names and service marks used in this prospectus are the property of their respective owners.

THE OFFERING

Common stock offered	shares
Common stock to be outstanding after the offering	shares
Use of proceeds	We intend to use the net proceeds from this offering for clinical development of our glufosfamide, TH-070 and 2DG product candidates, research and development activities, initial development of sales and marketing infrastructure and working capital and other general corporate purposes. See "Use of Proceeds" for additional information.
Risk Factors	See "Risk Factors" and the other information in this prospectus for information you should consider before deciding whether to invest in shares of our common stock.
Proposed NASDAQ National Market symbol	THLD

The number of shares of our common stock to be outstanding after the closing of this offering is based on 304,202 shares of our common stock outstanding as of December 31, 2003 and has been adjusted to reflect, and unless otherwise indicated, the conversion of all of our outstanding preferred stock into 33,848,484 shares of our common stock, which will occur automatically upon the closing of this offering.

The number of shares of our common stock outstanding after the offering excludes:

- 2,949,397 shares of common stock issuable upon exercise of stock options outstanding as of December 31, 2003 at a weighted average exercise price of $0.10 per share;
- 38,000 shares of common stock issuable upon exercise of a warrant outstanding as of December 31, 2003 with an exercise price of $1.00 per share, which does not expire upon the closing of this offering;
- 4,033,901 shares of common stock available for future grants under our 2001 Stock Option Plan as of December 31, 2003;
- 4,000,000 shares of common stock reserved for issuance under our 2004 Equity Incentive Plan; and
- shares of common stock reserved for issuance under our 2004 Employee Stock Purchase Plan.

Unless otherwise indicated, all information in this prospectus assumes that the underwriters do not exercise their option to purchase up to shares of our common stock to cover over-allotments, if any, and shares of our common stock resulting from the conversion of all outstanding shares of our preferred stock into common stock upon completion of this offering.

SUMMARY FINANCIAL DATA

The summary financial data set forth below should be read in conjunction with our financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. See Note 2 to our financial statements for information regarding computation of net loss per share attributable to common stockholders and Note 13 to our financial statements for information regarding computation of pro forma net loss per share attributable to common stockholders.

	Period from October 17, 2001 (date of inception) to December 31, 2001	Years Ended December 31, 2002	Years Ended December 31, 2003	Cumulative Period from October 17, 2001 (date of inception) to December 31, 2003
		(In thousands, except per share data)		
Operating expenses:				
Research and development	$ 35	$ 2,179	$ 6,252	$ 8,466
General and administrative	201	306	2,057	2,564
Total operating expenses	236	2,485	8,309	11,030
Loss from operations	(236)	(2,485)	(8,309)	(11,030)
Interest income	—	27	65	92
Interest expense	—	—	(59)	(59)
Net loss	(236)	(2,458)	(8,303)	(10,997)
Dividend related to beneficial conversion feature of convertible preferred stock	—	—	(40,862)	(40,862)
Net loss attributable to common stockholders	$ (236)	$ (2,458)	$ (49,165)	$ (51,859)
Net loss per common share:				
Basic and diluted	$ (1.29)	$ (21.19)	$ (305.37)	
Weighted average number of shares used in per common share calculations:				
Basic and diluted	183	116	161	
Pro forma net loss per common share (unaudited):				
Basic and diluted[1]			$ (4.04)	
Weighted average number of shares used in pro forma per common share calculations (unaudited):				
Basic and diluted			12,156	

(1) Pro forma basic and diluted net loss per common share have been computed to give effect to the automatic conversion of all of our outstanding preferred stock into 33,848,484 shares of common stock upon the closing of this offering (using the as-converted method) for the year ended December 31, 2003.

The following table presents a summary of our balance sheet as of December 31, 2003:

- on an actual basis;
- on a pro forma basis to give effect to the automatic conversion of all of our outstanding preferred stock into 33,848,484 shares of our common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to give further effect to the sale of shares of common stock by us in this offering at an assumed initial public offering price of $ per share (the midpoint of the estimated price range shown on the cover page of this prospectus), after deducting underwriting discounts and commissions and estimated offering costs to be paid by us.

	As of December 31, 2003		
	Actual	Pro Forma	Pro Forma As Adjusted
		(In thousands)	
Balance Sheet Data:			
Cash and cash equivalents	$ 40,609	$ 40,609	$
Working capital	40,177	40,177	
Total assets	41,270	41,270	
Notes payable, less current position	242	242	
Redeemable convertible preferred stock	49,839	—	
Total stockholders' equity (deficit)	(9,695)	40,144	

RISK FACTORS

Any investment in our stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below and all information contained in this prospectus, before you decide whether to purchase our common stock. Additional risks and uncertainties not currently known to us or that we currently do not deem material may also become important factors that may materially and adversely affect our business. The trading price of our common stock could decline due to any of these risks or uncertainties, and you may lose part or all of your investment.

Risks Related to Our Business

Risks Related to Drug Discovery, Development and Commercialization

We are substantially dependent upon the success of our glufosfamide and TH-070 product candidates. We have not yet commenced pivotal clinical trials for these products, and those trials may not demonstrate efficacy or lead to regulatory approval.

We will not be able to commercialize our lead product candidates, glufosfamide and TH-070, until we obtain FDA approval in the United States or approval by comparable regulatory agencies in Europe and other countries. To satisfy FDA or foreign regulatory approval standards for the commercial sale of our product candidates, we must demonstrate in adequate and controlled clinical trials that our product candidates are safe and effective. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful. A number of companies in the pharmaceutical industry, including biotechnology companies, have suffered significant setbacks in advanced clinical trials, even after obtaining promising results in earlier clinical trials.

For example, estimates of survival time or percentages obtained from small scale Phase 2 clinical trials are not necessarily indicative of the results in larger clinical trials. Phase 1 and Phase 2 safety trials of glufosfamide were conducted on small numbers of patients and were designed to evaluate the activity of glufosfamide on a preliminary basis. However, these trials were not designed to demonstrate the efficacy of glufosfamide as a therapeutic agent. Although we believe the Phase 1 and Phase 2 trials of glufosfamide have generated promising early data, there can be no assurance that similar results will be observed in subsequent trials, or that such results will prove to be statistically significant or demonstrate safety and efficacy to the satisfaction of the FDA or other regulatory agencies. In Phase 2 studies, glufosfamide has not shown clinical activity for the treatment of glioblastoma and has only demonstrated marginal activity for the treatment of non-small cell lung cancer. Based on our pre-IND communications with the FDA, we believe that the clinical trial we plan to commence in the second half of 2004 for the second-line treatment of pancreatic cancer will serve as a pivotal Phase 3 trial. If the results from this trial are not persuasive as determined by the FDA, then this trial will not serve as the basis for FDA approval. The FDA may require us to modify the trial design or conduct additional clinical trials prior to accepting our NDA or granting marketing approval.

While we believe that rat studies of TH-070 suggest it may reduce prostate size, we have no evidence that clinical trials will demonstrate that TH-070 will reduce prostate size in humans.

Our product candidates must undergo rigorous clinical testing, the results of which are uncertain and could substantially delay or prevent us from bringing them to market.

Before we can obtain regulatory approval for a product candidate, we must undertake extensive clinical testing in humans to demonstrate safety and efficacy to the satisfaction of the FDA or other regulatory agencies. Clinical trials of new drug candidates sufficient to obtain regulatory marketing approval are expensive and take years to complete.

We cannot assure you that we will successfully complete clinical testing within the time frame we have planned, or at all. We may experience numerous unforeseen events during, or as a result of, the clinical trial process that could delay or prevent us from receiving regulatory approval or commercializing our product candidates, including the following:

- our clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and/or preclinical testing or to abandon programs;
- the results obtained in earlier stage testing may not be indicative of results in future trials;
- trial results may not meet the level of statistical significance required by the FDA or other regulatory agencies;
- enrollment in our clinical trials for our product candidates may be slower than we anticipate, resulting in significant delays;
- we, or regulators, may suspend or terminate our clinical trials if the participating patients are being exposed to unacceptable health risks; and
- the effects of our product candidates on patients may not be the desired effects or may include undesirable side effects or other characteristics that may delay or preclude regulatory approval or limit their commercial use, if approved.

Completion of clinical trials depends, among other things, on our ability to enroll a sufficient number of patients, which is a function of many factors, including:

- the therapeutic endpoints chosen for evaluation;
- the eligibility criteria defined in the protocol;
- the size of the patient population required for analysis of the trial's therapeutic endpoints;
- our ability to recruit clinical trial investigators with the appropriate competencies and experience;
- our ability to obtain and maintain patient consents; and
- competition for patients by clinical trial programs for other treatments.

We may experience difficulties in enrolling patients in our clinical trials, which could increase the costs or affect the timing or outcome of these trials. This is particularly true with respect to diseases with relatively small patient populations, such as pancreatic cancer, which is an indication for our glufosfamide product candidate.

We are subject to significant regulatory approval requirements, which could delay, prevent or limit our ability to market our product candidates.

Our research and development activities, preclinical studies, clinical trials and the anticipated manufacturing and marketing of our product candidates are subject to extensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in Europe and elsewhere. We require the approval of the relevant regulatory authorities before we may commence commercial sales of our product candidates in a given market. The regulatory approval process is expensive and time-consuming, and the timing of receipt of regulatory approval is difficult to predict. Our product candidates could require a significantly longer time to gain regulatory approval than expected, or may never gain approval. We cannot assure you that, even after expending substantial time and financial resources, we will obtain regulatory approval for any of our product candidates. A delay or denial of regulatory approval could delay or prevent our ability to generate product revenues and to achieve profitability.

Changes in the regulatory approval policy during the development period of any of our product candidates, changes in, or the enactment of, additional regulations or statutes, or changes in regulatory review practices for a submitted product application may cause a delay in obtaining approval or result in the rejection of an application for regulatory approval.

Regulatory approval, if obtained, may be made subject to limitations on the indicated uses for which we may market a product. These limitations could adversely affect our potential product revenues. Regulatory approval may also require costly post-marketing follow-up studies. In addition, the labeling, packaging, adverse event reporting, storage, advertising, promotion and record-keeping related to the product will be subject to extensive ongoing regulatory requirements. Furthermore, for any marketed product, its manufacturer and its manufacturing facilities will be subject to continual review and periodic inspections by the FDA or other regulatory authorities. Failure to comply with applicable regulatory requirements may, among other things, result in fines, suspensions of regulatory approvals, product recalls, product seizures, operating restrictions and criminal prosecution.

Our product candidates are based on Metabolic Targeting, which is an unproven approach to therapeutic intervention.

All of our product candidates are based on Metabolic Targeting, a therapeutic approach that targets fundamental differences in energy metabolism between normal and certain diseased cells. We have not, nor to our knowledge has any other company, received regulatory approval for a drug based on this approach. There can be no assurance that our approach will lead to the development of approvable or marketable drugs.

In addition, the FDA or other regulatory agencies may lack experience in evaluating the safety and efficacy of drugs based on Metabolic Targeting, which could lengthen the regulatory review process, increase our development costs and delay or prevent commercialization of our product candidates.

Our product candidates may have undesirable side effects that prevent their regulatory approval or limit their use if approved.

Glufosfamide is known to cause reversible toxicity to the bone marrow and kidneys, as well as nausea and vomiting. TH-070, which we are developing to treat patients with BPH, has been investigated in clinical studies as a male contraceptive and is known to cause reversible testicular pain in some patients. These side effects or others identified in the course of our clinical trials may outweigh the benefits of our product candidates and prevent regulatory approval or limit their market acceptance if they are approved.

Delays in clinical testing could result in increased costs to us and delay our ability to obtain regulatory approval and commercialize our product candidates.

Significant delays in clinical testing could materially impact our product development costs and delay regulatory approval of our product candidates. We do not know whether planned clinical trials will begin on time, will need to be redesigned or will be completed on schedule, if at all. Clinical trials can be delayed for a variety of reasons, including delays in:

- obtaining regulatory approval to commence a trial;
- obtaining clinical materials;
- reaching agreement on acceptable clinical study agreement terms with prospective sites;
- obtaining institutional review board approval to conduct a study at a prospective site; and
- recruiting patients to participate in a study.

Orphan drug exclusivity affords us limited protection, and if another party obtains orphan drug exclusivity for the drugs and indications we are targeting, we may be precluded from commercializing our product candidates in those indications.

We intend to seek orphan drug designation for the cancer indications that our glufosfamide and 2DG product candidates are intended to treat. Under the Orphan Drug Act, the FDA may grant orphan drug

designation to drugs intended to treat a rare disease or condition, which is defined by the FDA as a disease or condition that affects fewer than 200,000 individuals in the United States. The company that obtains the first FDA approval for a designated orphan drug indication receives marketing exclusivity for use of that drug for that indication for a period of seven years. Orphan drug exclusive marketing rights may be lost if the FDA later determines that the request for designation was materially defective, or if the manufacturer is unable to assure sufficient quantity of the drug. Orphan drug designation does not shorten the development or regulatory review time of a drug, but does provide limited advantages in the regulatory review and approval process. Because the prevalence of BPH is greater than 200,000 individuals in the United States, TH-070 for the treatment of BPH is not eligible for orphan drug designation and we cannot rely on this protection to provide marketing exclusivity.

Orphan drug exclusivity may not prevent other market entrants. A different drug, or, under limited circumstances, the same drug may be approved by the FDA for the same orphan indication. The limited circumstances are an inability to supply the drug in sufficient quantities or where a new formulation of the drug has shown superior safety or efficacy. As a result, if our product is approved and receives orphan drug status, the FDA can still approve other drugs for use in treating the same indication covered by our product, which could create a more competitive market for us.

Moreover, due to the uncertainties associated with developing pharmaceutical products, we may not be the first to obtain marketing approval for any orphan drug indication. Even if we obtain orphan drug designation, if a competitor obtains regulatory approval for glufosfamide or 2DG for the same indication before us, we would be blocked from obtaining approval for that indication for seven years, unless our product is a new formulation of the drug that has shown superior safety or efficacy, or the competitor is unable to supply sufficient quantities.

Even if we obtain regulatory approval, our marketed drugs will be subject to ongoing regulatory review. If we fail to comply with continuing United States and foreign regulations, we could lose our approvals to market drugs and our business would be seriously harmed.

Following initial regulatory approval of any drugs we may develop, we will be subject to continuing regulatory review, including review of adverse drug experiences and clinical results that are reported after our drug products become commercially available. This would include results from any post-marketing tests or vigilance required as a condition of approval. The manufacturer and manufacturing facilities we use to make any of our drug candidates will also be subject to periodic review and inspection by the FDA. If a previously unknown problem or problems with a product or a manufacturing and laboratory facility used by us is discovered, the FDA or foreign regulatory agency may impose restrictions on that product or on the manufacturing facility, including requiring us to withdraw the product from the market. Any changes to an approved product, including the way it is manufactured or promoted, often require FDA approval before the product, as modified, can be marketed. We and our contract manufacturers will be subject to ongoing FDA requirements for submission of safety and other post-market information. If we and our contract manufacturers fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters;
- impose civil or criminal penalties;
- suspend or withdraw our regulatory approval;
- suspend any of our ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications filed by us;
- impose restrictions on our operations;
- close the facilities of our contract manufacturers; or
- seize or detain products or require a product recall.

Risks Related to Our Financial Performance and Operations

We have incurred losses since our inception and anticipate that we will incur continued losses for the next several years, and our future profitability is uncertain.

We are a development stage company with a limited operating history and no current source of revenue from our product candidates. We have incurred losses in each year since our inception in 2001. We have devoted substantially all of our resources to research and development of our product candidates. We have financed our operations primarily through private placements of our equity securities. For the year ended December 31, 2003, we had a net loss of $8.3 million and had an accumulated deficit of $11.0 million. We do not expect to generate any revenue from our product candidates over the next several years. Clinical trials are costly, and as we continue to advance our product candidates through development, we expect our research and development expenses to increase significantly, especially when we begin our pivotal Phase 3 clinical trial for glufosfamide. In addition, we plan to significantly expand our operations, and will need to expand our infrastructure and facilities and hire additional personnel. As a result, we expect that our annual operating losses will increase significantly over the next several years.

To attain profitability, we will need to successfully develop products and effectively market and sell them. We have never generated revenue from our product candidates, and there is no guarantee that we will be able to do so in the future. If our glufosfamide or TH-070 product candidates fail to show positive results in our ongoing clinical trials, and we do not receive regulatory approval for one or more of them, or if these product candidates do not achieve market acceptance even if approved, we will not become profitable for at least the next several years. If we fail to become profitable, or if we are unable to fund our continuing losses, we may be unable to continue our clinical development programs, and you could lose your investment.

We may need substantial additional funding and may be unable to raise capital when needed, which could force us to delay, reduce or eliminate our drug discovery, product development and commercialization activities.

Developing drugs, conducting clinical trials, and commercializing products is expensive. Our future funding requirements will depend on many factors, including:

- the progress and cost of our clinical trials and other research and development activities;
- the costs and timing of obtaining regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent applications, claims, patents and other intellectual property rights;
- the cost and timing of securing manufacturing capabilities for our clinical product candidates and commercial products, if any;
- the costs of establishing sales, marketing and distribution capabilities; and
- the terms and timing of any collaborative, licensing and other arrangements that we may establish.

We believe that the net proceeds from this offering, together with our cash on hand, will be sufficient to fund our projected operating requirements for the next two years. However, we may need to raise additional capital or incur indebtedness to continue to fund our operations in the future. Our ability to raise additional funds will depend on financial, economic and market conditions and other factors, many of which are beyond our control. There can be no assurance that sufficient funds will be available to us when required or on satisfactory terms. If necessary funds are not available, we may have to delay, reduce the scope or eliminate some of our development programs, which could delay the time to market for any of our product candidates. We may also need to seek funds through arrangements with collaborators or others that may require us to relinquish rights to certain product candidates that we might otherwise seek to develop or commercialize independently.

Raising additional funds may cause dilution to existing stockholders or require us to relinquish valuable rights.

We may raise additional funds through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. We cannot be certain that additional funding will be available on acceptable terms, or at all. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience further dilution. Debt financing, if available, may subject us to restrictive covenants that could limit our flexibility in conducting future business activities. To the extent that we raise additional funds through collaboration and licensing arrangements, it will be necessary to relinquish some rights to our clinical product candidates.

If we are unable to establish sales and marketing capabilities, we may be unable to successfully commercialize our cancer product candidates.

If our cancer product candidates are approved for commercial sale, we plan to establish our own sales force to market them in the United States and potentially Europe. We currently have no experience in selling, marketing or distributing pharmaceutical products and do not have a sales force to do so. Before we can commercialize any products, we must develop our sales, marketing and distribution capabilities, which is an expensive and time consuming process, and our failure to do this successfully could delay any product launch. Our efforts to develop internal sales and marketing capabilities could face a number of risks, including:

- we may not be able to attract a sufficient number of qualified sales and marketing personnel;
- the cost of establishing a marketing or sales force may not be justifiable in light of the potential revenues for any particular product; and
- our internal sales and marketing efforts may not be effective.

Our success depends in part on recruiting and retaining key personnel and, if we fail to do so, it may be more difficult for us to execute our business strategy. We are currently a small organization and will need to hire additional personnel to execute our business strategy successfully.

Our success depends on our continued ability to attract, retain and motivate highly qualified management, clinical and scientific personnel and on our ability to develop and maintain important relationships with leading academic institutions, clinicians and scientists. We are highly dependent upon our senior management and scientific staff, particularly our Chief Executive Officer, Dr. Harold E. Selick, and our founder and President, Dr. George F. Tidmarsh. The loss of the services of Dr. Selick, Dr. Tidmarsh or one or more of our other key employees could delay or prevent the successful completion of our clinical trials or the commercialization of our product candidates.

As of March 31, 2004, we had 23 employees. We intend to increase the size of our staff over the next several months. Our success will depend on our ability to hire additional qualified personnel. Competition for qualified personnel in the biotechnology field is intense. We face competition for personnel from other biotechnology and pharmaceutical companies, universities, public and private research institutions and other organizations. We may not be able to attract and retain qualified personnel on acceptable terms given the competition for such personnel. If we are unsuccessful in our recruitment efforts, we may be unable to execute our strategy.

As we expand our operations, we may experience difficulties in managing our growth.

Future growth will impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. In addition, rapid and significant growth will place a strain on our administrative and operational infrastructure. As our operations expand, we expect that we will need to manage additional relationships with collaborators and various third parties, including contract research organizations, manufacturers and others. Our ability to manage our operations and growth will require us to

continue to improve our operational, financial and management controls, reporting systems and procedures. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy.

Our facilities in California are located near an earthquake fault, and an earthquake or other natural disaster or resource shortage could disrupt our operations.

Important documents and records, such as hard copies of our laboratory books and records for our product candidates, are located in our corporate headquarters at a single location in South San Francisco, California near active earthquake zones. In the event of a natural disaster, such as an earthquake, drought or flood, or localized extended outages of critical utilities or transportation systems, we do not have a formal business continuity or disaster recovery plan, and could therefore experience a significant business interruption. In addition, California from time to time has experienced shortages of water, electric power and natural gas. Future shortages and conservation measures could disrupt our operations and could result in additional expense.

Risks Related to Our Dependence on Third Parties

We rely on third parties to manufacture glufosfamide, TH-070 and 2DG. If these parties do not manufacture the active pharmaceutical ingredients or finished products of satisfactory quality, in a timely manner, in sufficient quantities or at an acceptable cost, clinical development and commercialization of our product candidates could be delayed.

We do not currently own or operate manufacturing facilities; consequently, we rely and expect to continue to rely on third parties for the production of clinical and commercial quantities of our product candidates. We have not yet entered into any long term manufacturing or supply agreement for any of our product candidates. Our current and anticipated future dependence upon others for the manufacture of our product candidates may adversely affect our ability to develop and commercialize any product candidates on a timely and competitive basis.

Our current supplies of glufosfamide have been prepared by a subsidiary of Baxter International, Inc. and we are depending on those materials in order to conduct and complete our planned clinical trials. Should those materials not remain stable, we may experience a significant delay in the commencement or completion of our glufosfamide trials. Although we are in the process of qualifying additional vendors to manufacture glufosfamide active pharmaceutical ingredient, or API, and drug product, we have not yet done so, and we may not be able to do so at an acceptable cost, if at all.

We believe that we have sufficient supplies of TH-070 drug product to conduct and complete our ongoing BPH clinical trial. These materials expire in October 2004, and we have ordered additional TH-070 API from a third-party manufacturer. We also have recently entered into an agreement with a separate third party to manufacture TH-070 drug product. We have not yet received any API or drug product from these manufacturers, and their failure to perform their obligations could significantly delay our TH-070 clinical program.

We believe that we have a sufficient supply of 2DG for our anticipated clinical trials over the next two years, although there can be no assurance that these supplies will remain stable and usable during this period. If these materials are not stable, we may experience a significant delay in our 2DG clinical program.

We will need to enter into additional agreements for additional supplies of each of our product candidates to complete clinical development and commercialize them. There can be no assurance that we can do so on favorable terms, if at all. For regulatory purposes, we will have to demonstrate comparability of the same drug substance from different manufacturers. Our inability to do so could delay our clinical programs.

To date, our product candidates have been manufactured in quantities sufficient for preclinical studies or initial clinical trials. If any of our product candidates is approved by the FDA or other regulatory agencies for commercial sale, we will need to have it manufactured in commercial quantities. We may not be able to

successfully increase the manufacturing capacity for any of our product candidates in a timely or economic manner or at all. Significant scale-up of manufacturing may require additional validation studies, which the FDA and other regulatory agencies must review and approve. If we are unable to successfully increase the manufacturing capacity for a product candidate, the regulatory approval or commercial launch of that product candidate may be delayed, or there may be a shortage of supply which could limit our sales.

In addition, if the facility or the equipment in the facility that produces our product candidates is significantly damaged or destroyed, or if the facility is located in another country and trade or commerce with such country is interrupted, we may be unable to replace the manufacturing capacity quickly or inexpensively. The inability to obtain manufacturing agreements, the damage or destruction of a facility on which we rely for manufacturing or any other delays in obtaining supply would delay or prevent us from completing our clinical trials and commercializing our current product candidates.

We have no control over our manufacturers' and suppliers' compliance with manufacturing regulations, and their failure to comply could result in an interruption in the supply of our product candidates.

The facilities used by our contract manufacturers must undergo an inspection by the FDA for compliance with current good manufacturing practice, or cGMP regulations, before the respective product candidates can be approved. In the event these facilities do not receive a satisfactory cGMP inspection for the manufacture of our product candidates, we may need to fund additional modifications to our manufacturing process, conduct additional validation studies, or find alternative manufacturing facilities, any of which would result in significant cost to us as well as a delay of up to several years in obtaining approval for such product candidate. In addition, our contract manufacturers, and any alternative contract manufacturer we may utilize, will be subject to ongoing periodic inspection by the FDA and corresponding state and foreign agencies for compliance with cGMP regulations and similar foreign standards. We do not have control over our contract manufacturers' compliance with these regulations and standards. Any failure by our third-party manufacturers or suppliers to comply with applicable regulations could result in sanctions being imposed on them (including fines, injunctions and civil penalties), failure of regulatory authorities to grant marketing approval of our product candidates, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecution.

We rely on third parties to conduct our clinical trials, and their failure to perform their obligations in a timely or competent manner may delay development and commercialization of our product candidates.

We rely almost exclusively on third-party clinical investigators to conduct our clinical trials and other third-party organizations to oversee the operations of such clinical trials and to perform data collection and analysis. As a result, we may face delays outside of our control if these parties do not perform their obligations in a timely or competent fashion. This risk is heightened for our clinical trials conducted outside of the United States, where it may be more difficult to ensure that studies are conducted in compliance with FDA requirements. We will rely significantly upon the accrual of patients at clinical sites outside the United States. Any third-party that we hire to conduct clinical trials may also provide services to our competitors, which could compromise the performance of their obligations to us. If we experience significant delays in the progress of our clinical trials and in our plans to file NDAs, the commercial prospects for product candidates could be harmed and our ability to generate product revenue would be delayed or prevented.

We intend to rely on strategic collaborators to market and sell TH-070 for BPH worldwide and our potential cancer products outside the United States.

We have no sales and marketing experience. We intend to contract with strategic collaborators to sell and market TH-070 for BPH worldwide and our cancer products outside the United States. We may not be successful in entering into collaborative arrangements with third parties for the sale and marketing of any products. Any failure to enter into collaborative arrangements on favorable terms could delay or hinder our ability to develop

and commercialize our product candidates and could increase our costs of development and commercialization. Dependence on collaborative arrangements will subject us to a number of risks, including:

- we may not be able to control the amount or timing of resources that our collaborators may devote to the product candidates;
- we may be required to relinquish important rights, including intellectual property, marketing and distribution rights;
- we may have lower revenues than if we were to market and distribute such products ourselves;
- should a collaborator fail to commercialize one of our product candidates successfully, we may not receive future milestone payments or royalties;
- a collaborator could separately move forward with a competing product candidate developed either independently or in collaboration with others, including our competitors;
- our collaborators may experience financial difficulties;
- business combinations or significant changes in a collaborator's business strategy may also adversely affect a collaborator's willingness or ability to complete its obligations under any arrangement; and
- our collaborators may operate in countries where their operations could be adversely affected by changes in the local regulatory environment or by political unrest.

Risks Related to Our Intellectual Property

TH-070 and 2DG are known compounds that are not protected by composition-of-matter patents.

TH-070 and 2DG are known compounds that are not protected by composition-of-matter patents. Consequently, these compounds and certain of their uses are in the public domain. Another company has rights to market TH-070 in certain European countries for the treatment of certain cancer indications, and we cannot prevent its sale for these indications or for indications where we have not received patent protection. Even if we obtain patents for TH-070 to treat BPH, there may be off-label use of competitive products for our patented indications.

We have in-licensed one issued patent that covers the treatment of breast cancer with 2DG in combination with paclitaxel or docetaxel and related applications that cover other combination therapies, but there can be no assurance that any other patent application under this license will be issued. As a result, others may develop and market 2DG for the treatment of other cancers, or for the treatment of breast cancer in combination with chemotherapy agents where we do not obtain patents claiming such use.

Metabolic Targeting is not protected by patents, and others may be able to develop competitive drugs using this approach.

We do not have patents that would prevent others from taking advantage of Metabolic Targeting generally to discover and develop new therapies for cancer, BPH or other diseases. Consequently, our competitors may seek to discover and develop potential therapeutics that operate by mechanisms of action that are the same or similar to the mechanisms of action of our product candidates.

We are dependent on patents and proprietary technology, both our own and those licensed from others. If we or our licensors fail to adequately protect this intellectual property or if we do not have exclusivity for the marketing of our products, our ability to commercialize products could suffer.

Our commercial success will depend in part on our ability and the ability of our licensors to obtain and maintain patent protection sufficient to prevent others from marketing our product candidates, as well as to successfully defend and enforce these patents against infringement and to operate without infringing the

proprietary rights of others. We will only be able to protect our product candidates from unauthorized use by third parties to the extent that valid and enforceable patents cover our product candidates or they are effectively protected by trade secrets. If our patents, or those patents we have licensed are found to be invalid, we will lose the ability to exclude others from making, using or selling the inventions claimed therein. We have a limited number of patents and pending patent applications.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions. No consistent policy regarding the breadth of claims allowed in biotechnology patents has emerged to date in the United States. The laws of many countries may not protect intellectual property rights to the same extent as United States laws, and those countries may lack adequate rules and procedures for defending our intellectual property rights. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we do not know whether any of our patent applications will result in the issuance of any patents, and we cannot predict the breadth of claims that may be allowed in our patents or in the patents we license from others.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- we or our licensors might not have been the first to make the inventions covered by each of our or our licensors' pending patent applications and issued patents, and we may have to participate in expensive and protracted interference proceedings to determine priority of invention;
- we or our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative product candidates or duplicate any of our or our licensors' product candidates;
- our or our licensors' pending patent applications may not result in issued patents;
- our or our licensors' issued patents may not provide a basis for commercially viable products or may not provide us with any competitive advantages or may be challenged by third parties;
- others may design around our or our licensors' patent claims to produce competitive products which fall outside the scope of our or our licensors' patents;
- we may not develop or in-license additional patentable proprietary technologies related to our product candidates; or
- the patents of others may prevent us from marketing one or more of our product candidates for one or more indications that may be valuable to our business strategy.

Moreover, an issued patent does not guarantee us the right to practice the patented technology or commercialize the patented product. Third parties may have blocking patents that could be used to prevent us from commercializing our patented products and practicing our patented technology. Our issued patents and those that may be issued in the future may be challenged, invalidated or circumvented, which could limit our ability to prevent competitors from marketing related product candidates or could limit the length of the term of patent protection of our product candidates. In addition, the rights granted under any issued patents may not provide us with proprietary protection or competitive advantages against competitors with similar technology. Furthermore, our competitors may independently develop similar technologies. For these reasons, we may have competition for our product candidates. Moreover, because of the extensive time required for development, testing and regulatory review of a potential product, it is possible that, before any of our product candidates can be commercialized, any related patent may expire or remain in force for only a short period following commercialization, thereby reducing any advantage of the patent.

We rely on trade secrets and other forms of non-patented intellectual property protection. If we are unable to protect our trade secrets, other companies may be able to compete more effectively against us.

We rely on trade secrets to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect, especially in the pharmaceutical industry, where much of the information about a product must be made public during the regulatory approval process. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States may be less willing to or may not protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

If we are sued for infringing intellectual property rights of third parties or if we are forced to engage in an interference proceeding, it will be costly and time consuming, and an unfavorable outcome in that litigation or interference would have a material adverse effect on our business.

Our ability to commercialize our product candidates depends on our ability to develop, manufacture, market and sell our product candidates without infringing the proprietary rights of third parties. Numerous United States and foreign issued patents and pending patent applications, which are owned by third parties, exist in the general field of cancer and BPH therapies or in fields that otherwise may relate to our product candidates. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that our product candidates or any other compound that we may develop, may infringe, or which may trigger an interference proceeding regarding one of our owned or licensed patents or applications. There could also be existing patents of which we are not aware that our product candidates may inadvertently infringe or which may become involved in an interference proceeding.

The biotechnology and biopharmaceutical industries are characterized by the existence of a large number of patents and frequent litigation based on allegations of patent infringement. While our clinical investigational drugs are in clinical trials, and prior to commercialization, we believe our current clinical activities fall within the scope of the exemptions provided by 35 U.S.C. Section 271(e) in the United States, which covers activities related to developing information for submission to the FDA. As our clinical investigational drugs progress toward commercialization, the possibility of a patent infringement claim against us increases. While we attempt to ensure that our active clinical investigational drugs and the methods we employ to manufacture them and methods for their use do not infringe other parties' patents and other proprietary rights, competitors or other parties may assert that we infringe their proprietary rights.

We may be exposed to future litigation based on claims that our product candidates, or the methods we employ to manufacture them, infringe the intellectual property rights of others. Our ability to manufacture and commercialize our product candidates may depend on our ability to demonstrate that the manufacturing processes we employ and the use of our products candidates do not infringe third-party patents. If third-party patents were found to cover our product candidates or their use or manufacture, we could be required to pay damages or be enjoined and therefore unable to commercialize our product candidates, unless we obtained a license. A license may not be available to us on acceptable terms, if at all.

Risks Related to Our Industry

If our competitors are able to develop and market products that are more effective, safer or more affordable than ours, or obtain marketing approval before we do, our commercial opportunities may be limited.

Competition in the biotechnology and pharmaceutical industries is intense and continues to increase, particularly in the area of cancer treatment. Most major pharmaceutical companies and many biotechnology companies are aggressively pursuing oncology development programs, including traditional therapies and therapies with novel mechanisms of action. Our cancer product candidates face competition from established biotechnology and pharmaceutical companies, including Aventis, Lilly, Pfizer and SuperGen and from generic pharmaceutical manufacturers. Our BPH product candidate faces competition from established pharmaceutical companies, including Abbott Laboratories, Boehringer-Ingelheim, GlaxoSmithKline, Merck and Pfizer, as well as from surgical and non-surgical interventions. We also face potential competition from academic institutions, government agencies and private and public research institutions engaged in the discovery and development of drugs and therapies. Many of our competitors have significantly greater financial resources and expertise in research and development, preclinical testing, conducting clinical trials, obtaining regulatory approvals, manufacturing, sales and marketing than we do. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established pharmaceutical companies.

Our competitors may succeed in developing products that are more effective, have fewer side effects and are safer or more affordable than our product candidates, which would render our product candidates less competitive or noncompetitive. These competitors also compete with us to recruit and retain qualified scientific and management personnel, establish clinical trial sites and patient registration for clinical trials, as well as to acquire technologies and technology licenses complementary to our programs or advantageous to our business. Moreover, competitors that are able to achieve patent protection, obtain regulatory approvals and commence commercial sales of their products before we do, and competitors that have already done so, may enjoy a significant competitive advantage.

There is a substantial risk of product liability claims in our business. If we do not obtain sufficient liability insurance, a product liability claim could result in substantial liabilities.

Our business exposes us to significant potential product liability risks that are inherent in the development, manufacturing and marketing of human therapeutic products. Regardless of merit or eventual outcome, product liability claims may result in:

- delay or failure to complete our clinical trials;
- withdrawal of clinical trial participants;
- decreased demand for our product candidates;
- injury to our reputation;
- litigation costs;
- substantial monetary awards against us; and
- diversion of management or other resources from key aspects of our operations.

If we succeed in marketing products, product liability claims could result in an FDA investigation of the safety or efficacy of our products, our manufacturing processes and facilities or our marketing programs. An FDA investigation could also potentially lead to a recall of our products or more serious enforcement actions, or limitations on the indications for which they may be used, or suspension or withdrawal of approval.

We have product liability insurance that covers our clinical trials up to a $3 million annual aggregate limit. We intend to expand our insurance coverage to include the sale of commercial products if marketing approval is

obtained for our product candidates or any other compound that we may develop. However, insurance coverage is increasingly expensive. We may not be able to maintain insurance coverage at a reasonable cost or at all, and the insurance coverage that we obtain may not be adequate to cover potential claims or losses.

Even if we receive regulatory approval to market our product candidates, the market may not be receptive to our product candidates upon their commercial introduction, which would negatively affect our ability to achieve profitability.

Our product candidates may not gain market acceptance among physicians, patients, healthcare payors and the medical community. The degree of market acceptance of any approved products will depend on a number of factors, including:

- the effectiveness of the product;
- the prevalence and severity of any side effects;
- potential advantages or disadvantages over alternative treatments;
- relative convenience and ease of administration;
- the strength of marketing and distribution support;
- the price of the product, both in absolute terms and relative to alternative treatments; and
- sufficient third-party coverage or reimbursement.

If our product candidates receive regulatory approval but do not achieve an adequate level of acceptance by physicians, healthcare payors and patients, we may not generate product revenues sufficient to attain profitability.

If third-party payors do not adequately reimburse patients for any of our product candidates, if approved for marketing, we may not be successful in selling them.

Our ability to commercialize any products successfully will depend in part on the extent to which reimbursement will be available from governmental and other third-party payors, both in the United States and in foreign markets. Even if we succeed in bringing one or more products to the market, the amount reimbursed for our products may be insufficient to allow our products to compete effectively with products that are reimbursed at a higher level. If the price we are able to charge for any products we develop is inadequate in light of our development costs, our profitability could be adversely affected.

Reimbursement by a governmental and other third-party payor may depend upon a number of factors, including the governmental and other third-party payor's determination that use of a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

Obtaining reimbursement approval for a product from each third-party and government payor is a time-consuming and costly process that could require us to provide supporting scientific, clinical and cost-effectiveness data for the use of our products to each payor. We may not be able to provide data sufficient to obtain reimbursement.

Eligibility for coverage does not imply that any drug product will be reimbursed in all cases or at a rate that allows us to make a profit. Interim payments for new products, if applicable, may also not be sufficient to cover our costs and may not become permanent. Reimbursement rates may vary according to the use of the drug and the clinical setting in which it is used, may be based on payments allowed for lower-cost drugs that are already reimbursed, may be incorporated into existing payments for other products or services, and may reflect budgetary constraints and/or Medicare or Medicaid data used to calculate these rates. Net prices for products also may be reduced by mandatory discounts or rebates required by government health care programs or by any future relaxation of laws that restrict imports of certain medical products from countries where they may be sold at lower prices than in the United States.

The health care industry is experiencing a trend toward containing or reducing costs through various means, including lowering reimbursement rates, limiting therapeutic class coverage and negotiating reduced payment schedules with service providers for drug products. There have been, and we expect that there will continue to be, federal and state proposals to constrain expenditures for medical products and services, which may affect reimbursement levels for our future products. In addition, the Centers for Medicare and Medicaid Services frequently change product descriptors, coverage policies, product and service codes, payment methodologies and reimbursement values. Third-party payors often follow Medicare coverage policy and payment limitations in setting their own reimbursement rates and may have sufficient market power to demand significant price reductions.

Foreign governments tend to impose strict price controls, which may adversely affect our future profitability.

In some foreign countries, particularly in the European Union, prescription drug pricing is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our profitability will be negatively affected.

We may incur significant costs complying with environmental laws and regulations, and failure to comply with these laws and regulations could expose us to significant liabilities.

Our research and development activities use biological and hazardous materials that are dangerous to human health and safety or the environment. We are subject to a variety of federal, state and local laws and regulations governing the use, generation, manufacture, storage, handling and disposal of these materials and wastes resulting from these materials. We are also subject to regulation by the Occupational Safety and Health Administration, or OSHA, the California and federal environmental protection agencies and to regulation under the Toxic Substances Control Act. OSHA or the California or federal EPA may adopt regulations that may affect our research and development programs. We are unable to predict whether any agency will adopt any regulations that could have a material adverse effect on our operations. We have incurred, and will continue to incur, capital and operating expenditures and other costs in the ordinary course of our business in complying with these laws and regulations.

Although we believe our safety procedures for handling and disposing of these materials comply with federal, state and local laws and regulations, we cannot entirely eliminate the risk of accidental injury or contamination from the use, storage, handling or disposal of hazardous materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could significantly exceed our insurance coverage.

We may not be able to conduct, or contract with others to conduct, animal testing in the future, which could harm our research and development activities.

Certain laws and regulations relating to drug development require us to test our product candidates on animals before initiating clinical trials involving humans. Animal testing activities have been the subject of controversy and adverse publicity. Animal rights groups and other organizations and individuals have attempted to stop animal testing activities by pressing for legislation and regulation in these areas and by disrupting these activities through protests and other means. To the extent the activities of these groups are successful, our research and development activities may be interrupted or delayed.

Risks Related to the Offering

The price of our common stock may be volatile and you may not be able to sell your shares at or above the initial offering price.

Prior to this offering, there has been no public market for our common stock. An active and liquid trading market for our common stock may not develop or be sustained following this offering. The market price for our common stock may decline below the initial public offering price and our stock price is likely to be volatile. You may not be able to sell your shares at or above the initial public offering price. The stock markets in general, and the markets for biotechnology stocks in particular, have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock.

Price declines in our common stock could result from general market and economic conditions and a variety of other factors, including:

- adverse results or delays in our clinical trials of glufosfamide, TH-070 or 2DG;
- announcements of FDA non-approval of our product candidates, or delays in the FDA or other foreign regulatory agency review process;
- adverse actions taken by regulatory agencies with respect to our product candidates, clinical trials, manufacturing processes or sales and marketing activities;
- announcements of technological innovations or new products by our competitors;
- regulatory developments in the United States and foreign countries;
- any lawsuit involving us or our product candidates;
- announcements concerning our competitors, or the biotechnology or pharmaceutical industries in general;
- developments concerning our strategic alliances or acquisitions;
- actual or anticipated variations in our operating results;
- changes in recommendations by securities analysts or lack of analyst coverage;
- deviations in our operating results from the estimates of analysts;
- sales of our common stock by our executive officers, directors and five percent stockholders or sales of substantial amounts of common stock;
- changes in accounting principles; and
- loss of any of our key scientific or management personnel.

In the past, following periods of volatility in the market price of a particular company's securities, litigation has often been brought against that company. If litigation of this type is brought against us, it could be extremely expensive and divert management's attention and the company's resources.

We will have broad discretion in how we use the net proceeds from this offering, and we may not use them effectively.

Our management will have considerable discretion in the application of the net proceeds of the offering. We currently intend to use the net proceeds from this offering to fund expenses related to clinical trials, other research and development, sales and marketing and for general corporate purposes and for working capital. However, our plans may change and we could spend the net proceeds in ways that do not necessarily enhance the value of our common stock.

If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.

If you purchase shares in this offering, the value of your shares based on our actual book value will immediately be less than the offering price you paid. This reduction in the value of your equity is known as dilution. This dilution occurs in large part because our earlier investors paid substantially less than the initial public offering price when they purchased their shares. Investors purchasing common stock in this offering will, therefore, incur immediate dilution of $ in net tangible book value per share of common stock, based on an assumed initial public offering price of $ per share. Investors will incur additional dilution upon the exercise of outstanding stock options and an outstanding warrant. In addition, if we raise funds by issuing additional securities, the newly issued shares will further dilute your percentage ownership of our company.

If our officers, directors and largest stockholders choose to act together, they may be able to control the outcome of a stockholder vote.

After this offering, our officers, directors and holders of 5% or more of our outstanding common stock will beneficially own approximately % of our common stock (after giving effect to the conversion of all outstanding shares of our preferred stock, but assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options or warrants). As a result, these stockholders, acting together, will be able to significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions. The interests of this group of stockholders may not always coincide with the interests of other stockholders, and they may act in a manner that advances their best interests and not necessarily those of other stockholders.

A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the near future. If there are substantial sales of our common stock, the price of our common stock could decline.

Sales of substantial amounts of our common stock in the public market after the offering could adversely affect the price of our common stock. After consummation of this offering, our current stockholders will be subject to a 180-day lock-up on the sale of their shares. After the lock-up expires, at least shares of our common stock will become freely tradeable, shares of common stock will be tradeable subject to Rule 144 and holders of shares of our common stock will have rights to cause us to file a registration statement on their behalf and to include their shares in registration statements that we may file on behalf of other stockholders. By exercising their registration rights, and selling a large number of shares, these holders could cause the price of our common stock to decline.

Our certificate of incorporation, our bylaws and Delaware law contain provisions that could discourage another company from acquiring us and may prevent attempts by our stockholders to replace or remove our current management.

Provisions of Delaware law, our certificate of incorporation and by-laws may discourage, delay or prevent a merger or acquisition that stockholders may consider favorable, including transactions in which you might

otherwise receive a premium for your shares. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace or remove our board of directors. These provisions include:

- authorizing the issuance of "blank check" preferred stock without any need for action by stockholders;
- providing for a classified board of directors with staggered terms;
- requiring supermajority stockholder voting to effect certain amendments to our certificate of incorporation and by-laws;
- eliminating the ability of stockholders to call special meetings of stockholders;
- prohibiting stockholder action by written consent; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

FORWARD-LOOKING STATEMENTS

This prospectus, including the sections entitled "Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and "Business," contains forward-looking statements. We may, in some cases, use words such as "project," "believe," "anticipate," "plan," "expect," "estimate," "intend," "should," "would," "could," "potentially," "will," or "may," or other words that convey uncertainty of future events or outcomes to identify these forward-looking statements. Forward-looking statements in this prospectus may include statements about:

- our ability to commence, and the timing of, clinical trials for our glufosfamide, TH-070 and 2DG development programs;
- the completion and success of any clinical trials that we commence;
- our receipt of regulatory approvals;
- our ability to maintain and establish intellectual property rights in our product candidates;
- whether any product candidates we commercialize are safer or more effective than other marketed products, treatments or therapies;
- our research and development activities, including development of our new product candidates, and projected expenditures;
- our ability to successfully complete preclinical and clinical testing for new product candidates we develop or license;
- our ability to obtain licenses to any necessary third party intellectual property;
- our ability to retain and hire necessary employees and appropriately staff our development programs;
- our use of the proceeds from this offering;
- our cash needs; and
- our financial performance.

There are a number of important factors that could cause actual results to differ materially from the results anticipated by these forward-looking statements. These important factors include those that we discuss in this prospectus under the caption "Risk Factors." You should read these factors and the other cautionary statements made in this prospectus as being applicable to all related forward-looking statements wherever they appear in this prospectus. If one or more of these factors materialize, or if any underlying assumptions prove incorrect, our actual results, performance or achievements may vary materially from any future results, performance or achievements expressed or implied by these forward-looking statements. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

USE OF PROCEEDS

We estimate that our net proceeds from the sale of shares of common stock in this offering will be approximately $ million, assuming an initial public offering price of $ per share, the mid-point of the estimated price range shown on the cover of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering costs payable by us. If the underwriters exercise their over-allotment option, we estimate that we will receive additional net proceeds of approximately $ million. We expect to use the net proceeds to fund:

- clinical development of glufosfamide, TH-070 and 2DG, including trials for additional indications;
- research and development of additional product candidates;
- initial development of a sales and marketing infrastructure; and
- working capital, capital expenditures and other general corporate purposes, including potential strategic acquisitions.

The amounts and timing of our actual expenditures will depend upon numerous factors, including the timing and success of preclinical testing, the timing and success of our ongoing clinical trials and any clinical trials we may commence in the future, the timing of regulatory submissions, status of our research and development programs, the amount of proceeds actually raised in this offering and the amount of cash generated by our operations, if any. We may also use a portion of the proceeds for the acquisition of, or investment in, companies, technologies, products or assets that complement our business. However, we have no present understandings, commitments or agreements to enter into any potential acquisitions or investments. Our management will have broad discretion to allocate the net proceeds from this offering.

Pending use of the net proceeds as described above, we intend to invest the net proceeds of the offering in United States government and short-term investment grade securities.

DIVIDEND POLICY

We have never declared or paid any dividends on our capital stock. We currently intend to retain any future earnings to fund the development and expansion of our business, and therefore we do not anticipate paying cash dividends on our common stock in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in future financing instruments and other factors our board of directors deems relevant.

CAPITALIZATION

The following table describes our cash, cash equivalents and short-term investments and our capitalization as of December 31, 2003:

- on an actual basis;
- on a pro forma basis to give effect to the automatic conversion of all of our outstanding preferred stock into 33,848,484 shares of our common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to give further effect to the sale of shares of common stock by us in this offering at an assumed initial public offering price of $ per share (the midpoint of the estimated price range shown on the cover of this prospectus), after deducting underwriting discounts and commissions and estimated offering costs to be paid by us.

	Actual	Pro Forma	Pro Forma As Adjusted
	(In thousands, except share and per share data)		
Cash, cash equivalents and short-term investments	$ 40,818	$ 40,818	$
Notes payable, less current portion	$ 242	$ 242	$
Redeemable convertible preferred stock, $0.001 par value per share; 33,886,484 shares authorized; and 33,848,484 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	49,839	—	
Stockholders' equity (deficit):			
Preferred stock, $ par value per share; no shares authorized, actual and pro forma, and shares authorized, pro forma as adjusted; and no shares outstanding, actual, pro forma or pro forma as adjusted			
Common stock, $0.001 par value per share; 50,000,000 shares authorized, actual, pro forma, and pro forma as adjusted; and 304,202 shares issued and outstanding, actual; 34,152,686 shares issued and outstanding, pro forma; and shares issued and outstanding pro forma as adjusted	—	34	
Additional paid-in capital	2,685	52,490	
Deferred stock-based compensation	(1,546)	(1,546)	
Accumulated other comprehensive income	163	163	
Deficit accumulated during the development stage	(10,997)	(10,997)	
Total stockholders' equity (deficit)	(9,695)	(40,144)	
Total capitalization	$ 40,386	$ 40,386	$

The table above excludes:

- 2,949,397 shares of common stock issuable upon exercise of stock options outstanding as of December 31, 2003 at a weighted average exercise price of $0.10 per share;
- 38,000 shares of common stock issuable upon exercise of a warrant outstanding as of December 31, 2003 with an exercise price of $1.00 per share, which does not expire upon the closing of this offering;
- 4,033,901 shares of common stock available for future grants under our 2001 Stock Option Plan as of December 31, 2003;
- 4,000,000 shares of common stock reserved for issuance under our 2004 Equity Incentive Plan; and
- shares of common stock reserved for issuance under our 2004 Employee Stock Purchase Plan.

DILUTION

If you invest in our common stock, your interest will be diluted immediately to the extent of the difference between the public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock after this offering.

Our historical net tangible book value as of December 31, 2003 was approximately $(9.7) million or $(31.87) per share of common stock. Pro forma net tangible book value as of December 31, 2003 was approximately $40.1 million or $1.18 per share of common stock. Pro forma net tangible book value gives effect to the conversion of all of our outstanding redeemable convertible preferred stock into 33,848,484 shares of our common stock, which will occur automatically upon the closing of this offering.

After giving effect to the issuance and sale by us of the shares of common stock offered by this prospectus, assuming an initial public offering price of $ per share (the midpoint of the estimated price range shown on the cover of this prospectus), after deducting underwriting discounts and commissions and estimated offering costs payable by us, our pro forma as adjusted net tangible book value as of , 2004 would have been approximately $ million, or $ per share. This represents an immediate increase in the pro forma net tangible book value of $ per share to existing stockholders and an immediate dilution of $ per share to new investors. This dilution is illustrated by the following table:

Assumed initial public offering price per share	$
Historical net tangible book value per share as of December 31, 2003	(31.87)
Increase per share due to assumed conversion of all shares of convertible preferred stock	33.05
Pro forma net tangible book value per share before this offering	$ 1.18
Increase per share attributable to this offering	
Pro forma as adjusted net tangible book value per share after the offering	
Dilution per share to new investors	$

The following table summarizes, as of December 31, 2003, the number of shares of common stock purchased from us, on a pro forma as adjusted basis to give effect to the conversion of all of our outstanding preferred stock into shares of common stock, which will occur automatically upon the closing of this offering, and the total consideration and the average price per share paid by existing stockholders and new investors at an assumed initial public offering price of $ per share before deducting underwriting discounts and commissions and estimated offering costs payable by us:

	Total Shares		Total Consideration		
	Number	%	Amount	%	Average Price Per Share
Existing stockholders	34,152,686		$ 50,007,919		$ 1.46
New investors					
Totals					

The foregoing discussion and tables assume no exercise of any stock options or warrants and no issuance of shares reserved for future issuance under our equity plans. As of December 31, 2003, there were stock options outstanding to purchase 2,949,397 shares of our common stock at a weighted average exercise price of $0.10 per share and a warrant outstanding to purchase 38,000 shares of our common stock at an exercise price of $1.00 per share. To the extent that any of these options or warrants are exercised, your investment will be further diluted. In addition, we may grant more options or warrants in the future.

If the underwriters exercise their over-allotment option in full, the following will occur:

- the pro forma as adjusted percentage of shares of our common stock held by existing stockholders will decrease to approximately % of the total number of pro forma as adjusted shares of our common stock outstanding after this offering; and
- the pro forma as-adjusted number of shares of our common stock held by new public investors will increase to , or approximately % of the total pro forma as-adjusted number of shares of our common stock outstanding after this offering.

SELECTED FINANCIAL DATA

The following selected statement of operations data for the period from October 17, 2001 (inception) to December 31, 2001 and the years ended December 31, 2002 and 2003, and balance sheet data as of December 31, 2002 and 2003, have been derived from our audited financial statements included elsewhere in this prospectus. The balance sheet data as of December 31, 2001, is derived from our audited financial statements that are not included in this prospectus. The selected financial data set forth below should be read together with the financial statements and the related notes to those financial statements, as well as "Management's Discussion and Analysis of Financial Condition and Results of Operations," appearing elsewhere in this prospectus.

	Period from October 17, 2001 (date of inception) to December 31, 2001	Years Ended December 31, 2002	Years Ended December 31, 2003	Cumulative Period from October 17, 2001 (date of inception) to December 31, 2003
		(In thousands, except per share data)		
Operating expenses:				
Research and development	$ 35	$ 2,179	$ 6,252	$ 8,466
General and administrative	201	306	2,057	2,564
Total operating expenses	236	2,485	8,309	11,030
Loss from operations	(236)	(2,485)	(8,309)	(11,030)
Interest income	—	27	65	92
Interest expense	—	—	(59)	(59)
Net loss	(236)	(2,458)	(8,303)	(10,997)
Dividend related to beneficial conversion feature of redeemable convertible preferred stock	—	—	(40,862)	(40,862)
Net loss attributable to common stockholders	$ (236)	$ (2,458)	$ (49,165)	$ (51,859)
Net loss per common share:				
Basic and diluted	$ (1.29)	$ (21.19)	$ (305.37)	
Weighted average number of shares used in per common share calculations:				
Basic and diluted	183	116	161	
Pro forma net loss per common share (unaudited) (see Note 13):				
Basic and diluted			$ (4.04)	
Weighted average number of shares used in pro forma per common share calculations (unaudited) (see Note 13):				
Basic and diluted			12,156	

	As of December 31, 2001	As of December 31, 2002	As of December 31, 2003
		(In thousands)	
Balance Sheet Data:			
Cash and cash equivalents	$ 187	$ 6,215	$ 40,609
Working capital	2	6,154	40,177
Total assets	195	6,726	41,270
Notes payable, less current portion	—	—	242
Redeemable convertible preferred stock	236	8,977	49,839
Total stockholders' deficit	(107)	(2,667)	(9,695)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our financial statements and related notes included elsewhere in this prospectus. This discussion may contain forward-looking statements based upon current expectations that involve risks and uncertainties, including those set forth under the heading "Risk Factors" and elsewhere in this prospectus. Our actual results and the timing of selected events discussed below could differ materially from those expressed in, or implied by, these forward-looking statements.

Overview

We are a biotechnology company focused on the discovery, development and commercialization of small molecule therapeutics based on Metabolic Targeting, an approach that targets fundamental differences in metabolism between normal and certain diseased cells. We are building a pipeline of drugs that are designed to selectively target tumor cells so that the drugs are less toxic to healthy tissues than conventional drugs, thereby providing improvements over current therapies.

Our initial clinical focus is the treatment of cancer and BPH. Our lead product candidate, glufosfamide, has completed two Phase 1 and five Phase 2 clinical trials in patients with various solid tumors. We expect to initiate a pivotal Phase 3 clinical trial of glufosfamide for the second-line treatment of pancreatic cancer in the second half of 2004. TH-070, our product candidate for the treatment of BPH, is in a Phase 2 clinical trial. 2-deoxyglucose, or 2DG, our product candidate for the treatment of solid tumors, is being evaluated in a Phase 1 clinical trial as a combination therapy. We are also working to discover novel drug candidates that are activated under the metabolic conditions typical of cancer cells, and we have identified lead compounds with promising *in vitro* data.

We are a development stage company and were incorporated in October 2001. We have incurred total losses since our inception through December 31, 2003 of $11.0 million. We have devoted substantially all of our resources to research and development of our product candidates. During the first quarter of 2004 we began a Phase 2 clinical trial testing TH-070 in patients with BPH and a Phase 1 clinical trial testing 2DG in patients with various solid tumors. Clinical trials are costly, and as we continue to advance our product candidates through development, we expect our research and development expenses to increase significantly, especially when we begin our pivotal Phase 3 clinical trials of glufosfamide. Compared to Phase 1 and Phase 2 clinical trials, Phase 3 clinical trials typically involve a greater number of patients, may be conducted at multiple sites and in several countries, are conducted over a longer period of time and require greater quantities of drug product. Additionally we plan to significantly expand our infrastructure and facilities and hire additional personnel, including sales and marketing personnel.

Revenues

We have not generated any revenues since our inception and do not expect to generate any revenues from the sale of our product candidates for many years.

Research and Development Expenses

Research and development expenses consist primarily of salaries and related costs for personnel, costs for research projects and preclinical studies, costs related to regulatory filings, costs of clinical materials and facility costs. Consulting expenses are a significant component of our research and development expenses as we rely on expert consultants in many of the areas mentioned above. We recognize expenses as they are incurred. Our accruals for expenses associated with preclinical and clinical studies are based upon the terms of the service contracts, the amount of services provided and the status of the activities. We expect that research and development expenses will increase significantly in the future as we progress our product candidates through the

more expensive later stage clinical trials, start additional clinical trials, progress our discovery research projects into the preclinical stage, file for regulatory approvals and hire more employees. From inception through December 31, 2003, we spent an aggregate of $8.5 million on research and development expenses.

General and Administrative Expenses

General and administrative expenses consist primarily of salaries and related costs for our personnel in the executive, finance, accounting and other administrative functions, as well as consulting costs for functions for which we either do not staff or only partially staff, including market research, business development, technical writing and accounting. Other costs include professional fees for legal and accounting services, insurance and facility costs. We anticipate that general and administrative expenses will increase significantly in the future as we continue to expand our operating activities and as a result of costs associated with being a public company. From inception through December 31, 2003, we spent an aggregate of $2.6 million on general and administrative expenses.

Stock-Based Compensation

We use the intrinsic method of Accounting Principles Board Opinion No. 25, *"Accounting for Stock Issued to Employees"* ("APB No. 25"), in accounting for employee stock options, and present disclosure of pro forma information required under SFAS No. 123, *"Accounting for Stock-Based Compensation"* ("SFAS No. 123"), as amended by SFAS No. 148, *"Accounting for Stock-Based Compensation—Transition and Disclosure—an amendment of FASB Statement No. 123"* ("SFAS No. 148"). For stock options granted to employees no compensation expense is recognized unless the exercise price is less than fair market value at the date of grant. In anticipation of this offering, we have determined that, for accounting purposes, the estimated fair market value of our common stock was greater than the exercise price for certain options. As a result we have recorded deferred stock-based compensation for these options of $10.8 million for the three months ended March 31, 2004, $2.3 million for the year ended December 31, 2003 and $25,000 for the year ended December 31, 2002. This expense, which is a non-cash charge, will be amortized over the period in which the options vest, which is generally four years. The amortization of this expense recognized for the year ended December 31, 2003 was $0.8 million and for the year ended December 31, 2002 was $1,000. We expect the remaining $12.3 million to be amortized as follows: $2.6 million for the year ending December 31, 2004, $3.3 million for the year ending December 31, 2005, $3.0 million for the year ending December 31, 2006, $2.7 million for the year ending December 31, 2007, and $0.7 million for the year ending December 31, 2008.

We account for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123 and Emerging Issues Task Force Issue No. 96-18, *"Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services,"* which require that these equity instruments are recorded at their fair value on the measurement date. The measurement of stock-based compensation is subject to periodic adjustment as the underlying equity instruments vest. As a result, the non-cash charge to operations for non-employee options with vesting criteria is affected each reporting period by changes in the fair value of our common stock. For options granted to non-employees, we recorded $0.3 million of stock-based compensation expense during the year ended December 31, 2003. We recorded $21,000 of stock-based compensation expense for the year ended December 31, 2002.

Results of Operations

Years ended December 31, 2003 and 2002 and the period from October 17, 2001 (date of inception) to December 31, 2001

We have a limited operating history. Presented below is a comparison of our results of operations for the year ended December 31, 2003 compared to the year ended December 31, 2002 and the period from October 17, 2001 (date of inception) to December 31, 2001. Our first full year of operations was 2002.

Research and Development

Research and development expenses for the year ended December 31, 2003 were $6.3 million compared to $2.2 million for the year ended December 31, 2002. The increase in research and development expenses was primarily due to increases of $1.3 million associated with increased staffing levels, $0.9 million for preclinical studies, $0.7 million for supplies and facilities, $0.4 million for manufacturing and testing of clinical material drug supply and $0.3 million for consulting and scientific advisory costs. Non-cash stock-based compensation expenses associated with option issuances to our research and development staff and consultants were $0.3 million in 2003 and $21,000 in 2002.

Research and development expenses for the year ended December 31, 2002 were $2.2 million compared to $35,000 for the period from October 17, 2001 (date of inception) to December 31, 2001. This increase was primarily due to increases of $1.4 million associated with increased staffing and consulting costs, $0.3 million for facilities costs, $0.2 million for preclinical studies and as a result of conducting operations for a full year. Research and development expenses for the period from October 17, 2001 (date of inception) to December 31, 2001 were primarily comprised of supplies and facilities costs.

General and Administrative

General and administrative expenses were $2.1 million for the year ended December 31, 2003 compared to $0.3 million for the year ended December 31, 2002. The increase in general and administration expenses was primarily due to costs of $0.5 million associated with increases in staffing levels including adding a Chief Executive Officer, a Chief Financial Officer and a Vice President of Intellectual Property. Consulting costs increased by $0.2 million for market research, financial and business development support. Non-cash stock-based compensation expenses associated with option issuances to our administrative personnel were $0.8 million in 2003 and $1,000 in 2002.

General and administrative expenses for the year ended December 31, 2002 were $0.3 million compared to $0.2 million for the period ended December 31, 2001. This increase was primarily due to increased legal expenses.

General and administrative expenses for the period from October 17, 2001 (date of inception) to December 31, 2001 were $0.2 million, which consisted primarily of salary and expenses for the company's sole employee and founder and costs associated with establishing operations.

Interest Income (Expense)

Interest income for the year ended December 31, 2003 was $65,000 compared to $27,000 for the year ended December 31, 2002. The increase in interest income was principally attributable to the interest earned on the $40.9 million of net proceeds from the sale of our Series B convertible preferred stock in November 2003. There was no interest income for the period from October 17, 2001 (date of inception) to December 31, 2001.

Interest expense was $59,000 for the year ended December 31, 2003 which consists of interest incurred under our March 2003 line of credit and amortization of debt issuance costs associated with warrants issued in

connection with the line of credit. There was no interest expense for the year ended December 31, 2002 or for the period from October 17, 2001 (date of inception) to December 31, 2001.

We incurred net operating losses for the years ended December 31, 2002 and 2003 and the period ended December 31, 2001 and, accordingly, we did not pay any federal or state income taxes. As of December 31, 2003, we had accumulated approximately $8.6 million and $8.3 million in federal and state net operating loss carryforwards, respectively, to reduce future taxable income. If not utilized, our federal and state net operating loss carryforwards will begin to expire in various amounts in 2021 and 2011, respectively. Our net operating loss carryforwards are subject to certain limitations on annual utilization in case of changes in ownership, as defined by federal and state tax laws.

We have not recorded a benefit from our net operating loss carryforwards because we believe that it is uncertain that we will have sufficient income from future operations to realize the carryforwards prior to
their expiration. Accordingly, we have established a valuation allowance against the deferred tax asset arising from the carryforwards.

At December 31, 2003, we had research credit carryforwards of approximately $0.2 million and $0.2 million for federal and state income tax purposes, respectively. If not utilized, the federal carryforwards will expire in various amounts beginning in 2011. The state research credit can be carried forward indefinitely.

Beneficial Conversion Feature

In November 2003, we sold 24,848,484 shares of Series B redeemable convertible preferred stock for aggregate net proceeds of approximately $40.9 million. The issuance of the Series B redeemable convertible preferred stock resulted in a beneficial conversion feature, calculated in accordance with EITF 00-27, "Application of Issue No. 98-5, "*Accounting for Convertible Securities with Beneficial Conversion Features of Contingently Adjustable Conversion Ratios" to Certain Convertible Instruments*," based upon the conversion price of the preferred stock into shares of common stock, and the fair market value of the common stock at the date of issue. Accordingly, for the year ended December 31, 2003, we recognized approximately $40.9 million as a charge to additional paid-in-capital to account for the deemed dividend on the redeemable convertible preferred stock as of the issuance date. In accordance with the provisions of EITF 00-27, the amount of the deemed dividend related to the beneficial conversion feature is limited to the net proceeds received for the sale of the securities.

Liquidity and Capital Resources

We have incurred net losses since inception and as of December 31, 2003, we had an accumulated deficit of $11.0 million. We have not generated any revenues and do not expect to generate revenue from product candidates for several years. Since inception, we have funded our operations primarily through the private placement of our preferred stock. We raised $9.0 million through the sale of our Series A convertible preferred stock in 2001 and 2002 and $40.9 million through the sale of our Series B convertible preferred stock in November 2003.

At December 31, 2003, we had cash and cash equivalents of $40.6 million compared to $6.2 million at December 31, 2002. The increase in cash and cash equivalents was primarily due to net proceeds of $40.9 million from the issuance of Series B convertible preferred stock completed in November 2003.

Net cash used in operating activities for the periods ended December 31, 2003, 2002 and 2001 was $6.7 million, $2.5 million and $0.1 million, respectively. For the year ended December 31, 2003, cash used in operations was attributable primarily to our net losses after adjustments for non-cash charges related to depreciation and amortization of deferred stock-based compensation and an increase in accrued liabilities resulting primarily from increased research and development activities. For the year ended December 31, 2002,

cash used in operations was attributable primarily to our net losses after adjustments for non-cash charges related to depreciation and amortization of deferred stock-based compensation increase in accounts payable. The use of cash in the period ended December 31, 2001 was attributable to our net loss partially offset by increases in accounts payable and accrued liabilities.

Net cash used in investing activities was $0.2 million for the year ended December 31, 2003 for the purchase of equipment. For the year ended December 31, 2002, net cash used in investing activities was $0.2 million for the purchase of two certificates of deposit that serve as collateral for our facility lease and for a line of credit agreement, and the purchase of equipment and marketable securities.

Net cash provided by financing activities for the years ended December 31, 2003 and 2002, and the period from October 17, 2001 (date of inception) to December 31, 2001 was $41.3 million, $8.7 million and $0.2 million, respectively. The net cash provided by financing activities was primarily attributable to the sale of redeemable convertible preferred stock. Cash provided for the year ended December 31, 2003 also included $0.4 million of net proceeds under the line of credit.

Developing drugs, conducting clinical trials, and commercializing products is expensive. Our future funding requirements will depend on many factors, including:

- the progress and costs of our clinical trials and other research and development activities;
- the costs and timing of obtaining regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent applications, claims, patents and other intellectual property rights;
- the costs and timing of securing manufacturing capabilities for our clinical product candidates and commercial products, if any;
- the costs of establishing sales, marketing and distribution capabilities; and
- the terms and timing of any collaborative, licensing and other arrangements that we may establish.

We expect to incur losses from operations in the future. We expect to incur increasing research and development expenses, including expenses related to clinical trials and additional personnel. We expect that our general and administrative expenses will increase in the future as we expand our staff, add infrastructure, and incur additional expenses related to being a public company, including director's and officers' insurance, investor relations and increased professional fees.

We believe that the net proceeds from this offering, together with our cash on hand, will be sufficient to fund our projected operating requirements for the next two years. However, we may need to raise additional capital or incur indebtedness to continue to fund our operations in the future. Our ability to raise additional funds will depend on financial, economic, market conditions and other factors, many of which are beyond our control. There can be no assurance that sufficient funds will be available to us when required or on satisfactory terms. If necessary funds are not available, we may have to delay, reduce the scope or eliminate some of our research and development, which could delay the time to market for any of our product candidates. We may also need to seek funds through arrangements with collaborators or others that may require us to relinquish rights to certain product candidates that we might otherwise seek to develop or commercialize independently.

Obligations and Commitments

In March 2003, we entered into a loan and security agreement with Silicon Valley Bank to borrow up to $1.0 million for working capital and equipment purchases. Through December 31, 2003, we have borrowed approximately $0.5 million under this facility, which will be repaid over a 36-month period from the date of borrowing. These borrowings bear interest at the rate of 5.5% per year at December 31, 2003. In addition we issued a warrant to Silicon Valley Bank to purchase up to 38,000 shares of Series A convertible preferred stock

in connection with the loan agreement. We may borrow the remaining $0.5 million available under this facility, as amended, until March 31, 2005. At December 31, 2003 the amount due under this facility was $0.4 million. The financial covenant in this agreement requires us to maintain the lower of 85% of our total cash and cash equivalents or $10.0 million at Silicon Valley Bank. At December 31, 2003 we were in compliance with our covenants.

We have a sublease for a facility that expires on December 31, 2004. We are currently looking for a different facility. We cannot determine at this time our future lease obligations or how much capital, if any, we will spend on leasehold improvements.

As of December 31, 2003, future minimum payments under lease and financing line are as follows (in thousands):

	Within one year	One to three years	Four to five years	After five years	Total
Facilities lease	$ 473	$ —	$ —	$ —	$473
Financing line	166	242	—	—	408
Total	$ 639	$ 242	$ —	$ —	$881

In August 2003, we entered into an agreement with Baxter International, Inc. and Baxter Healthcare S.A. for the licensing and development of glufosfamide. Under this agreement, we paid Baxter an upfront license fee and milestone payment in 2003. We are obligated to make certain additional development milestone payments, and the next milestone payment is due when we initiate our pivotal Phase 3 clinical trial for glufosfamide. Future milestone payments in connection with the development of glufosfamide and United States and foreign regulatory submissions and approvals could total up to $9.3 million, and sales-based milestone payments could total up to $17.5 million. Following regulatory approval, we will be obligated to pay royalties to Baxter based on sales of glufosfamide products. We cannot be certain when, if ever, we will have to make development- or sales-based milestone or royalty payments to Baxter.

Under our license agreement with Dr. Theodore J. Lampidis and Dr. Waldemar Priebe for rights under a patent and certain patent applications that generally cover the treatment of cancer with 2DG in combination with certain other cancer drugs, we are obligated to make certain milestone payments, including milestone payments of up to $700,000 in connection with the filing and approval of an NDA for the first product covered by the licensed patents, as well as royalties based on sales of such products. We cannot be certain when, if ever, we will have to make these milestone or royalty payments.

Off-Balance Sheet Liabilities

As of December 31, 2001, 2002 and 2003, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts. Therefore, we are not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in these relationships.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and related disclosures. We review our estimates on an ongoing basis. We base our estimates on historical experience and on various other assumptions that we believe

to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions. While our significant accounting policies are described in more detail in the notes to our financial statements included in this prospectus, we believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our financial statements.

Stock-Based Compensation

We account for stock-based employee compensation arrangements in accordance with the provisions of APB No. 25 and SFAS No. 123 and comply with the disclosure requirements of SFAS No. 148. Under APB No. 25, compensation expense is based on the difference, if any, on the date of grant, between the estimated fair value of our common stock and the exercise price. SFAS No. 123 defines a "fair value" based method of accounting for an employee stock option or similar equity investment.

For financial reporting purposes, we have recorded stock-based compensation representing the difference between the estimated fair value of common stock and the option exercise price. Because shares of our common stock have not been publicly traded, we determined the estimated fair value based upon several factors, including significant milestones attained, sales of our redeemable convertible preferred stock, changes in valuations of existing comparable publicly-registered biotech companies, trends in the broad market for biotechnology stocks and the expected valuation we would obtain in an initial public offering.

We account for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123 and Emerging Issues Task Force ("EITF") Issue No. 96-18, *"Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods, or Services."*

As a result, the non-cash charge to operations for non-employee options with vesting or other performance criteria is affected each reporting period by changes in the estimated fair value of our common stock. The two factors which most affect these changes are the fair value of the common stock underlying stock options for which stock-based compensation is recorded and the volatility of such fair value. If our estimates of the fair value of these equity instruments change, it would have the effect of changing compensation expenses.

Preclinical Trial Accruals

We record accruals for estimated preclinical trial costs. These costs are a significant component of research and development expenses. We accrue for the costs of preclinical trials based upon estimates of work completed under service agreements. These estimates include the assessment of information received from third-party contract research organizations and the overall status of preclinical trial activities, however, our estimates may not match the timing of actual services performed by the organizations, which may result in adjustments to our research and development expenses in future periods.

Accounting for Income Taxes

Our income tax policy records the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts reported in the accompanying balance sheets, as well as operating loss and tax credit carry forwards. We have recorded a full valuation allowance to reduce our deferred tax asset, as based on available objective evidence; it is more likely than not that the deferred tax asset will not be realized. In the event that we were to determine that we would be able to realize our deferred tax assets in the future, an adjustment to the deferred tax asset would increase net income in the period such determination was made.

Recent Accounting Pronouncements

In May 2003, the FASB issued SFAS No. 150, *"Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity"*("SFAS No. 150"). SFAS No. 150 establishes standards for how

an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equities. It requires that an issuer classify a financial instrument that is within its scope as a liability or an asset in some circumstances. Many of those instruments were previously classified as equity. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. In November 2003, certain elements of SFAS No. 150 were deferred to fiscal periods beginning after December 15, 2004. SFAS No. 150 is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of SFAS No. 150 and still existing at the beginning of the interim period of adoption. Restatement is not permitted. The adoption of the effective elements of SFAS No. 150 had no material effect on our financial position or results of operations. We do not expect the adoption of the deferred elements of SFAS No. 150 to have a material impact on our financial position or our results of our operations.

In December 2003, the FASB issued a revised FASB Interpretation No. 46 ("FIN No. 46R"),*"Consolidation of Variable Interest Entities, an interpretation of ARB No. 51."* The FASB published the revision to clarify and amend some of the original provisions of FIN No. 46, which was issued in January 2003, and to exempt certain entities from its requirements. A variable interest entity ("VIE") refers to an entity subject to consolidation according to the provisions of this Interpretation. FIN No. 46R applies to entities whose equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support provided by any parties, including equity holders, or where the equity investors (if any) do not have a controlling financial interest. FIN No. 46R provides that if an entity is the primary beneficiary of a VIE, the assets, liabilities, and results of operations of the VIE should be consolidated in the entity's financial statements. In addition, FIN No. 46R requires that both the primary beneficiary and all other enterprises with a significant variable interest in a VIE provide additional disclosures. The provisions of FIN No. 46R will be effective in the first quarter of fiscal 2004. We do not expect the adoption of FIN No. 46R will have a material impact on our financial position or our results of operations.

Quantitative and Qualitative Disclosure of Market Risks

Our exposure to market risk is limited to interest income sensitivity, which is affected by changes in the general level of United States interest rates, particularly because the majority of our investments are in short-term debt securities.

The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. Some of the securities in which we invest may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if we hold a security that was issued with an interest rate fixed at the then-prevailing rate and the prevailing interest rate later rises, the principal amount of our investment will probably decline. To minimize this risk, in accordance with our investment policy, we maintain our portfolio of cash equivalents, short-term marketable securities and restricted cash in a variety of securities, including commercial paper, money market funds, government and non-government debt securities and certificates of deposit. The risk associated with fluctuating interest rates is limited to our investment portfolio and we do not believe that a 10% change in interest rates will have a significant impact on our interest income. As of December 31, 2003, all of our investments were in money market accounts, certificates of deposit or investment grade corporate debt obligations and U.S. government securities.

Our exposure to market risk also relates to the increase or decrease in the amount of interest expense we must pay on our outstanding borrowings under a line of credit agreement we entered into with a financial institution in March 2003. As of December 31, 2003, this facility provides for borrowings up to $1.0 million, of which approximately $0.5 million is available for future borrowings. At December 31, 2003, approximately $0.4 million was outstanding under this facility. Each borrowing under the line of credit accrues interest at the greater of the treasury note rate plus 3.0% or a fixed rate of 5.5% per annum at the date of borrowings and are repayable in 36 monthly installments. The risk associated with fluctuating interest expense is limited to this debt instrument and we do not believe that a 10% change in the treasury note rate would have a significant impact on our interest expense.

BUSINESS

Overview

We are a biotechnology company focused on the discovery, development and commercialization of small molecule therapeutics based on Metabolic Targeting, an approach that targets fundamental differences in metabolism between normal and certain diseased cells. We are building a pipeline of drugs that are designed to selectively target tumor cells so that the drugs are less toxic to healthy tissues than conventional drugs, thereby providing improvements over current therapies.

Our initial clinical focus is the treatment of cancer and benign prostatic hyperplasia, or BPH, a disease characterized by overgrowth of the prostate. Our lead product candidate, glufosfamide, has completed two Phase 1 and five Phase 2 clinical trials in patients with various solid tumors. We expect to initiate a pivotal Phase 3 clinical trial of glufosfamide for the second-line treatment of pancreatic cancer in the second half of 2004. TH-070, our product candidate for the treatment of BPH, is in a Phase 2 clinical trial. 2-deoxyglucose, or 2DG, our product candidate for the treatment of solid tumors, is being evaluated in a Phase 1 clinical trial as a combination therapy. We are also working to discover novel drug candidates that are activated under the metabolic conditions typical of cancer cells, and we have identified lead compounds with promising *in vitro* data.

For the treatment of cancer, we believe that our product candidates, based on Metabolic Targeting, can be broadly applied to the treatment of most solid tumors and have the potential to significantly increase the effectiveness of existing therapies. Metabolic Targeting provides the opportunity to treat not only rapidly dividing tumor cells, which are targeted by chemotherapy and radiation, but also slowly dividing tumor cells that generally evade these traditional therapies and ultimately contribute to relapse. For BPH, we believe that Metabolic Targeting will enable us to develop a new class of drugs to treat the disease more rapidly and effectively, with fewer side effects than current therapies. We believe that our focus on Metabolic Targeting, combined with our expertise in medicinal chemistry and drug development, provides us with the capability to identify, discover and develop novel therapies.

Our product candidates are focused on treating patients with significant unmet medical needs. Cancer is the second leading cause of death in the United States after cardiovascular disease. The American Cancer Society estimates that 563,700 people will die from cancer in the United States this year. Many cancers, such as pancreatic, lung and liver cancer, have few effective treatments and very low survival rates. BPH, which often leads to debilitating urinary problems, affects 50% of men in their sixties and approximately 90% of men over seventy, and current treatments have significant deficiencies. Approximately 17 million men in the United States, 27 million men in five major European countries and eight million men in Japan are estimated to suffer from symptoms of the disease and could benefit from a safe and effective treatment for BPH.

Limitations of Conventional Therapies

Current Therapies for Cancer

Many different approaches are used in treating cancer, including surgery, radiation and drugs or a combination of these approaches. Drugs used to treat cancer include chemotherapeutics, hormones and immune-based therapies. Traditionally, strategies for designing cancer therapies have focused on killing cancer cells that exhibit rapid division and growth, and most conventional cancer drugs have been evaluated and optimized using cellular and animal models that reflect rapid cell growth. However, most solid tumors are actually composed of both rapidly and slowly dividing cells. Conventional cancer treatments are not designed to target the slowly dividing cells found in large portions of solid tumors and therefore rarely succeed in killing all cancerous cells. These slowly dividing cells, which can evade treatment, often contribute to relapse.

Another disadvantage of current cancer therapies that target rapidly dividing cells is their toxic side effects. Because rapidly dividing cells are also found in many healthy tissues, particularly the gastrointestinal tract, bone marrow and hair follicles, nearly all conventional chemotherapy drugs cause severe side effects, such as diarrhea

and reduction in blood cell production, which may lead to bleeding, infection and anemia, as well as other side effects, such as hair loss. Likewise, radiation generally cannot be administered without causing significant damage to healthy tissue surrounding a tumor. The toxic and potentially fatal side effects of chemotherapy and radiation therapy are controlled by carefully balancing dose and dosing schedules to minimize toxicity to healthy cells and maximize cancer cell death. Unfortunately, achieving such a balance may permit rapidly dividing cancer cells to survive treatment, resulting in inadequate therapy.

Current Therapies for BPH

BPH is currently treated with drugs and, if necessary, surgery. There are two classes of drugs to treat BPH. The first, alpha adrenergic receptor blockers, work by relaxing the smooth muscle in the urethra and bladder without addressing the underlying condition of the enlarged prostate. Drugs in the second category, 5-alpha reductase inhibitors, work by blocking production of the hormones that stimulate the growth of new prostate cells but do not immediately kill existing cells. Consequently, this class of drugs has a slow onset, typically requiring daily treatment for many months before improving patient symptoms. Drugs in both classes can have significant side effects, including decreased libido, impotence and cardiovascular effects. Many patients ultimately fail existing medical therapy, leading to 350,000 surgical procedures annually in the United States, despite the risks of serious surgical complications including impotence and incontinence. The deficiencies in current therapies provide an opportunity for new drugs with improved efficacy or reduced side effects.

Metabolic Targeting

Metabolic Targeting is a therapeutic approach that targets fundamental differences in energy metabolism between normal and certain diseased cells. Cells generate energy needed for survival in two ways: the citric acid cycle and glycolysis. The citric acid cycle is a highly efficient process which provides the majority of cellular energy under normal conditions. Oxygen is essential for energy production through the citric acid cycle. Glycolysis, a process of glucose metabolism, is much less efficient in producing energy than the citric acid cycle. Unlike the citric acid cycle, oxygen is not required for glycolysis, and cells that rely primarily on glycolysis for energy production consume large quantities of glucose. Some diseased cells rely predominantly or exclusively on glycolysis. When these cells shift energy production to glycolysis, they must increase the levels of the proteins needed to transport and metabolize glucose. Metabolic Targeting takes advantage of these metabolic differences to selectively target certain diseased cells.

Metabolic Targeting For Cancer

Cancer cells require large amounts of glucose for energy production and growth. This increased consumption of glucose has two causes: the process of a normal cell becoming a rapidly dividing cancer cell; and the exposure of a cell to the low oxygen, or hypoxic, conditions within those regions of most solid tumors where cells are dividing slowly. First, when cells become cancerous, they require more energy and the level of proteins needed for glucose transport and metabolism increases. Second, as a tumor grows, it rapidly outgrows its blood supply, leaving portions of the tumor with regions where the oxygen concentration is significantly lower than in healthy tissues. As a consequence, tumor cells in these hypoxic zones rely on glycolysis for energy production and therefore further increase the levels of proteins responsible for glucose transport and metabolism.

We are focused on developing new cancer therapies by targeting the uptake and metabolism of glucose. In one application of Metabolic Targeting, we use a cancer-killing drug linked to glucose to take advantage of increased glucose transport proteins of cancer cells, thereby delivering the drug selectively to these cancer cells. In another application of Metabolic Targeting, we use compounds that interfere with specific steps of glycolysis. Because cancer cells depend on glycolysis to survive, these compounds substantially reduce energy production, leading to cell death. We are also pursuing drugs that incorporate both of these applications of Metabolic Targeting.

We believe that our product candidates may prove effective for treating rapidly dividing cancer cells because these cells require large amounts of energy and thus metabolize more glucose than do normal cells.

Glufosfamide targets the increased glucose transport by these cells through linking a cancer-killing drug to glucose, which enters these cells at relatively higher levels compared to most normal cells. Our other product candidates target glucose metabolism directly and provide the opportunity to increase the effectiveness of current therapies that treat the rapidly dividing cells in the tumor by reducing energy production in those cells. Radiation therapy, as well as the vast majority of chemotherapy drugs, kill cells by damaging DNA or affecting DNA synthesis to prevent cell replication. However, highly energy-dependent DNA repair mechanisms can restore the integrity of a cell's DNA. The balance between the extent of DNA damage and the efficiency of cellular DNA repair thus largely determines the effectiveness of therapy. Our product candidates that reduce cellular energy production inhibit these repair mechanisms, shifting the balance from repair to damage, and may increase the efficacy of current treatments. Furthermore, cancer cells become resistant to many conventional chemotherapy drugs by a highly energy-dependent process that pumps these drugs out of the cell, reducing their effect. Our product candidates that interfere with cellular energy production can disrupt this multidrug resistance, resulting in increased chemotherapy drug accumulation within the cell, which we believe will increase the effectiveness of these chemotherapy drugs.

In addition to treating rapidly dividing cancer cells, we believe that Metabolic Targeting provides the opportunity to kill slowly dividing cancer cells within hypoxic regions, which are poorly treated by current therapies that primarily target the rapidly dividing cells. Cell proliferation in hypoxic regions is greatly inhibited due to poor blood supply leading to insufficient nutrient supply and a lack of oxygen. Slowly dividing cells within the hypoxic region also undergo genetic changes which, as they accumulate in cells, can lead to the development of still more aggressive tumor cells that are resistant to therapy. Following treatment with radiation or chemotherapy, rapidly dividing cells in the vicinity of blood vessels are destroyed, providing room for these more aggressive cells from hypoxic regions to gain access to blood vessels and oxygen. These cells, which have become resistant to treatment, are then able to grow and proliferate, ultimately contributing to relapse. Thus, current cancer therapies leave the slowly proliferating cells in the hypoxic zones largely untreated while our product candidates are designed to kill these slowly dividing cells by targeting their increased glucose transport and metabolism.

Metabolic Targeting For BPH

We are also using Metabolic Targeting to develop a new class of drugs for BPH that may offer an improvement over current treatments. BPH is an overgrowth of prostate cells that results in a tumor that can restrict urine flow and cause a number of debilitating symptoms. Like hypoxic cancer cells, prostate cells in BPH tissue depend on glycolysis for energy production. These cells divert citrate, a molecule required for energy production by the citric acid cycle, into the seminal fluid to support the sperm, and therefore these cells cannot produce energy from the citric acid cycle. This process is mediated by the accumulation of high levels of zinc, which blocks citrate metabolism and disables the citric acid cycle in these prostate cells. These cells are therefore highly dependent on glycolysis for energy production. Our product candidate TH-070 inactivates glycolysis, kills prostate cells and reduces the size of the prostate in animals, and therefore may provide an effective treatment for BPH.

Our Product Development Programs

The following table summarizes the status of our product development programs:

Product Candidate/Indication	Development Status	Expected Milestones
Glufosfamide for Pancreatic Cancer		
• Second-line alone	Phase 2 completed	Initiate pivotal Phase 3 in 2H04
• First-line in combination with Gemzar	Single agent Phase 1 completed	Initiate Phase 2 in 2H04
TH-070		
• BPH	Phase 2 in progress	Results in 4Q04
2-Deoxyglucose (2DG)		
• Various solid tumors	Phase 1 in progress	Results in 1Q05

Glufosfamide

Our lead product candidate, glufosfamide, is a small molecule in clinical development for the treatment of pancreatic cancer. We plan to initiate a pivotal Phase 3 trial in the second half of 2004 to support marketing approval of glufosfamide for the second-line treatment of metastatic pancreatic cancer. As part of our registration and approval strategy, we are also planning to initiate, before the end of 2004, a Phase 2 clinical trial of glufosfamide in combination with Gemzar for the first-line treatment of inoperable locally advanced or metastatic pancreatic cancer. We believe that the unique mechanism of action of glufosfamide and its demonstrated activity in combination with Gemzar in animal studies, make it well-positioned to be used in combination with Gemzar. We are developing glufosfamide for pancreatic cancer based on activity seen in previous clinical trials, a known increase in glucose uptake in pancreatic cancer cells and the extreme hypoxia in tumors of this type. In Phase 1 and Phase 2 clinical trials, glufosfamide also has shown activity in advanced stage colon cancer and relapsed breast cancer, and we believe it may offer an improvement over conventional therapies for these indications.

Glufosfamide combines the active part of an approved alkylator, a member of a widely used class of chemotherapy drugs, with a glucose molecule. Because of its glucose component and a tumor cell's increased need for glucose, glufosfamide is preferentially transported into tumors compared to most normal tissues. Thus Metabolic Targeting offers the potential to provide increased selectivity for tumor cells and thereby improve the treatment of many solid tumors. Inside cells, the linkage between glucose and the alkylator is cleaved to release the active drug. With glucose as the side product, glufosfamide has fewer side effects than other drugs in its class, which are known to cause hemorrhagic cystitis, a serious condition characterized by severe bladder bleeding.

Market Opportunity

The American Cancer Society estimates that 31,860 patients will be diagnosed with pancreatic cancer in the United States in 2004, and approximately 31,270 patients will die from the disease. Only 15-20% of newly diagnosed patients are eligible for surgery, which is typically followed by radiation and chemotherapy. Patients with inoperable pancreatic cancer are treated with radiation and chemotherapy, or in the case of advanced disease, chemotherapy alone as the advantages of radiation are reduced. Gemzar is the standard of care for the first-line therapy of advanced metastatic pancreatic cancer. The largest published trial of Gemzar in advanced pancreatic cancer reported a median survival of 5.4 months. In Gemzar's Phase 3 registrational trial, median survival was 5.7 months, and no patient survived beyond two years. In this study, patients treated with 5-flurouracil, or 5-FU, the previous standard of care, had a median survival of 4.2 months, and no patient survived beyond two years. None of the 126 patients treated in both arms of this study achieved tumor shrinkage. Estimated 2003 sales of Gemzar for pancreatic cancer were $422 million.

Prior Clinical Trials

Glufosfamide has been evaluated in two Phase 1 and five Phase 2 clinical trials that together enrolled over 200 patients with a variety of advanced-stage cancers. In the two Phase 1 trials, escalating doses of glufosfamide were administered to 72 patients with solid tumors not amenable to established treatments. Although Phase 1 trials are designed primarily to assess safety, tumor shrinkage was observed in patients with breast cancer, non-small cell lung cancer, pleural mesothelioma, renal cell carcinoma and cancers of unknown primary origin.

In the Phase 1 trials, the one patient with advanced pancreatic cancer achieved a complete remission, and more than five years after being treated with glufosfamide alone, this patient remained alive and disease-free. This example may not be representative of the activity of glufosfamide when studied in larger trials.

The five Phase 2 studies of glufosfamide were multi-center studies to evaluate tumor response in patients with locally advanced or metastatic pancreatic cancer, relapsed non-small cell lung cancer, recurrent

glioblastoma, locally advanced or metastatic colon cancer not amenable to surgery and relapsed metastatic breast cancer. Glufosfamide was well tolerated and showed anti-tumor activity against breast, colon, non-small cell lung and pancreatic cancers, but not glioblastoma.

In the Phase 2 trial in patients with advanced pancreatic cancer, two of 34 patients achieved a partial response (defined as 30% or greater tumor diameter shrinkage) and 11 of 34 patients achieved stable disease (defined as less than 30% tumor diameter shrinkage and less than 20% growth in tumor diameter). Overall median survival with glufosfamide was estimated at 5.6 months, and two-year survival was estimated at 9%. The preliminary results of this study, published in the *European Journal of Cancer* in November 2003, reported a median survival of 5.3 months.

In the Phase 1 and Phase 2 trials, glufosfamide was generally well tolerated, with few drug-related serious adverse events. In particular, glufosfamide's adverse effects on bone marrow and the kidneys were generally reversible without requiring treatment of the side effects. Only 1% of patients developed severe lowering of the blood platelets, which help to stop bleeding. Toxicity to the kidney, as measured by serum elevation in waste products normally excreted by the kidney, was severe in only 1% of patients. Nausea and vomiting is the most common side effect of glufosfamide treatment. There have been no reports of hemorrhagic cystitis in patients treated with glufosfamide.

The Phase 1 and Phase 2 trials of glufosfamide were conducted by ASTA Medica Oncology, which was subsequently acquired by a subsidiary of Baxter International. We exclusively licensed worldwide rights to the compound and associated clinical data from Baxter.

Planned Clinical Trials

We are planning to develop glufosfamide as a single agent for the second-line treatment of metastatic pancreatic cancer, and in combination with Gemzar for the first-line treatment of inoperable, locally advanced and/or metastatic pancreatic cancer. In the second half of 2004, we plan to initiate a randomized, multi-center open-label pivotal Phase 3 trial of glufosfamide for the treatment of patients with metastatic pancreatic cancer who have failed treatment with Gemzar. This two-arm trial will compare glufosfamide to best supportive care, since there is no approved second-line treatment for pancreatic cancer. We anticipate that the final trial design will call for enrollment of approximately 300 patients. The primary efficacy endpoint of this trial will compare the survival of patients treated with glufosfamide to patients who receive best supportive care. Based on our communications with the FDA, we believe that a single trial with "persuasive" data may provide the basis for approval in this indication. Persuasive is an FDA term of art that means the data must demonstrate sufficient statistically significant clinical benefit as determined by the FDA, based on survival or an indirect measurement of benefit. We cannot assure you, however, that the trial will generate persuasive data, or that the FDA will not require additional clinical trials before approval.

As part of our registration and approval strategy, we also plan to initiate, before the end of 2004, a Phase 2 trial to evaluate glufosfamide in combination with Gemzar for the first-line treatment of advanced pancreatic cancer patients. The trial will evaluate various doses of glufosfamide in combination with the standard dose of Gemzar. The trial is intended to determine the maximum tolerated dose and clinical activity of this combination. We anticipate that approximately 42 patients will be enrolled in this trial.

Even though our immediate efforts will be focused on pancreatic cancer, the results of Phase 1 and Phase 2 clinical trials suggest that glufosfamide may also be useful for the treatment of other cancers. We expect to initiate additional glufosfamide clinical trials for other indications. Based on human clinical data, the activity of approved alkylators and our understanding of the mechanism of action of glufosfamide, we believe that breast, lung and colon cancers, as well as lymphomas and sarcomas, represent the most promising indications.

TH-070

TH-070, our product candidate for the treatment of BPH, is an orally administered small molecule that inhibits glycolysis by inactivating hexokinase, the enzyme that catalyzes the first step in glycolysis. As described above, hypoxic tumor cells and certain prostate cells depend on glycolysis for their energy production. By inhibiting glycolysis, TH-070 kills prostate cells, reducing the size of the prostate in animals, and therefore may provide an effective treatment for BPH. We are currently conducting a Phase 2 trial of TH-070 for the treatment of BPH, and we plan to initiate a registrational program for this indication in 2005. We are developing TH-070 for BPH based on our understanding that prostate cells rely predominantly on glycolysis for energy production, as well as published animal efficacy data and human clinical data demonstrating tolerability.

BPH Market Opportunity

As a man ages, it is common for his prostate to enlarge. This enlargement process begins as early as age 25 but does not cause problems until later in life, when the prostate presses against the urethra and symptoms of BPH become evident. Because the prostate surrounds the urethra, BPH can restrict the flow of urine, resulting in urine retention, which can cause weakening of the bladder wall and the inability to empty the bladder completely. The most common symptoms of BPH include a weak and interrupted urine stream, urgency, leaking and frequent urination. Severe BPH can result in urinary tract infections, kidney and bladder damage, bladder stones and incontinence.

The National Institutes of Health, or NIH, estimates that more than 50% of men in their sixties and approximately 90% of men over seventy have some symptoms of BPH. Approximately 17 million men in the United States, 27 million men in five major European countries and eight million men in Japan are estimated to suffer from symptoms of the disease and could benefit from a safe and effective treatment for BPH. Approximately 21% of them have been diagnosed, of which 56% receive medical therapy. In the United States, 2.0 million men are treated with drugs. These numbers are expected to increase in the future due to increased awareness and the aging population. The two major drugs approved to treat BPH had combined worldwide revenues of over $1.6 billion in 2003.

TH-070 for BPH

TH-070 offers the potential to treat BPH via a novel mechanism, by reducing the prostate size through Metabolic Targeting. By directly inhibiting glycolysis in prostate cells, we expect TH-070 to reduce the size of the prostate more rapidly than current medical treatments, without the attendant side effects, which include decreased libido, impotence and cardiovascular effects. Studies of glycolysis inhibitors have shown that, at the highest doses studied, multiple TH-070 doses can shrink the rat prostate by over 40%, and a single oral dose of a TH-070 analog can reduce the size of the rat prostate by up to 24%. Prostate shrinkage occurs at dosages that cause no observable adverse clinical effect on the animals, can be seen within ten days of dosing and has been reproduced with different dosing regimens by different investigators.

In January 2004, we initiated a Phase 2 clinical trial at the University of Bari, Italy, to evaluate the safety of TH-070 in patients with symptomatic BPH. We expect initial results of this trial to become available near the end of 2004. This trial is an open-label, two-arm study that will evaluate two dosing schedules of TH-070, 150 mg once a day and 150 mg three times a day, for 28 days. These doses and dosing schedules are based on animal efficacy data as well as human safety data. The trial will enroll a total of 60 males with symptomatic BPH, 30 patients per dosing schedule. Our major objective of this initial study is to determine the tolerability of TH-070 in patients with BPH. In addition, patients will be evaluated for specific efficacy parameters, including prostate volume, urine flow rate and a clinically validated assessment of each patient's BPH symptoms. Each of these parameters has been used as an efficacy endpoint in previous clinical trials that led to FDA approval of other BPH drugs. We expect the initial results of this trial to become available near the end of 2004. If we obtain promising data from this trial, we intend to initiate a registrational program of TH-070 for BPH in 2005.

2-Deoxyglucose (2DG)

2DG, our product candidate for the treatment of solid tumors, is in a Phase 1 trial. 2DG is an orally administered small molecule that employs Metabolic Targeting to treat solid tumors by directly inhibiting glycolysis. Because tumor cells in general, and those in hypoxic zones in particular, are dependent on glycolysis for survival, tumor cells are particularly sensitive to the effect of 2DG. This compound is a synthetic glucose analog that distributes selectively to tumor tissue because of metabolic changes related to increased glucose consumption. Because tumor cells exhibit increased levels of glucose transport proteins, these cells actively transport 2DG into the cells. Once inside the cell, 2DG interferes with cellular mechanisms for generating energy by competing with glucose for key enzymes in glycolysis. The *in vivo* efficacy of 2DG has been studied in mouse and rat models of sarcomas, adenocarcinomas, leukemias, melanomas and bladder, colon and breast tumors. In particular, treatment with 2DG, alone and in combination with other chemotherapy, resulted in increased lifespan or a reduction in tumor growth in many of these models.

We are conducting a Phase 1 trial of daily 2DG as a single agent and in combination with Taxotere to evaluate the safety, pharmacokinetics and maximum tolerated dose in patients with solid tumors. We plan to also conduct a Phase 1 trial of single doses of 2DG to evaluate its effect on prostate metabolism. We are developing 2DG based on its specificity for targeting tumor cells and extensive human safety data, as well as recently demonstrated animal efficacy that we and our collaborators at the University of Miami published in *Cancer Research* in January 2004.

Clinical Trials

2DG has been administered in clinical trials to approximately 700 people principally to evaluate the hormonal and metabolic effects of glucose deprivation. Collectively, these studies have shown that single intravenous doses of 2DG as high as 200 mg/kg do not cause any serious adverse events. Although this data supports the safe use of 2DG in humans, we have not yet obtained human safety data for the cumulative dose or oral administration of 2DG we intend to use in our clinical trials. The FDA may require such data before allowing us to proceed into pivotal clinical trials that will support approval.

We launched a Phase 1 clinical trial of 2DG in January 2004 at the University of Miami and have initiated a second site at the Cancer Therapy and Research Center, located in San Antonio, Texas. This trial is a dose-escalation study to determine the safety, pharmacokinetics and maximum tolerated dose of daily oral doses of 2DG given alone or in combination with Taxotere. The study is intended to enroll up to 40 patients with previously treated refractory advanced solid tumors. The study will also evaluate the effect of 2DG alone and in combination with Taxotere on tumor metabolism, and provide a preliminary assessment of efficacy, as assessed by computer tomography. We expect initial data from the study to be available by the first quarter of 2005.

Provided our safety study yields favorable results, we are planning to initiate Phase 2 studies that will be randomized, blinded, multiple-dose studies designed to evaluate the safety and efficacy of 2DG given in combination with chemotherapy. We will choose two indications and appropriate chemotherapy drugs for our Phase 2 program based on the results of the ongoing Phase 1 trial.

We plan to conduct a second Phase 1 trial of a single dose of 2DG in patients with prostate cancer. This study will evaluate the biological effect of 2DG on metabolism in the prostate by magnetic resonance spectroscopic imaging of citrate levels in both the cancerous and normal tissues within the prostate. This study will provide additional data on the safety, tolerability and pharmacokinetics of 2DG.

Discovery Research

Our research programs are focused on the design and development of novel cytotoxic prodrug compounds. A prodrug is an inactive compound that is converted in the human body either by spontaneous chemical reactions

or enzymatic processes that result in the formation of an active drug. The prodrug concept is well established in chemotherapy, but it was initially only employed to modify the pharmacokinetic properties of compounds through non-specific activation processes. Only more recently has the concept been put to use in the design of agents that are selectively activated in tumor tissues through specific activation processes.

Our prodrugs consist of two distinct parts, a toxic portion and an attached trigger molecule. To prevent general toxicity, the trigger molecule masks the toxin until the prodrug is activated by low oxygen concentration in the target tissue. Once activated, the toxin kills cells in its vicinity. We have designed prodrugs that are triggered only at the very low oxygen levels found in the hypoxic regions of solid tumors. Our experiments indicate that we can achieve a greater than 100-fold difference in cytotoxicity between cells in normal oxygen levels and hypoxic cells. We have identified lead compounds with promising *in vitro* data, and additional characterization, evaluation and optimization of these compounds is currently underway.

Our expertise includes broad capabilities in target identification and validation, assay development and compound screening. Our medicinal chemistry expertise includes the use of state-of-the-art technologies to turn initially promising compounds generated by our chemists into drug candidates. We believe that our research focus combined with our medicinal chemistry expertise provide us with the capacity to identify, discover and develop novel therapies.

Our Strategy

Our goal is to create a leading biotechnology company that develops and commercializes drugs based on Metabolic Targeting with an initial focus on cancer and BPH. Key elements of our strategy are to:

- *Develop glufosfamide, TH-070 and 2DG successfully.* We have ongoing Phase 1 and Phase 2 trials in oncology and BPH, and we expect to begin two more Phase 2 trials and a pivotal Phase 3 trial in 2004. We intend to advance all of our clinical programs as aggressively as possible, and assuming clinical results are positive, expect to file NDAs with the FDA and other foreign regulation agencies for our two lead product candidates, glufosfamide and TH-070, within three years. We are also exploring additional indications for these product candidates.
- *Continue to broaden our pipeline by identifying, discovering and developing new compounds.* We are actively pursuing a focused research program based on Metabolic Targeting to discover and develop novel therapies that address major unmet medical needs. We also plan to continue to evaluate additional in-licensing opportunities that build on our expertise and complement our current development pipeline.
- *Build on our expertise in Metabolic Targeting through continued research in cellular metabolism.* We intend to continue our focused approach in research and clinical development. We believe our expertise in Metabolic Targeting gives us an advantage in the identification of new product candidates, therapeutic indications and technologies. We will also leverage the expertise of our scientific and clinical advisors and continue to enter into collaborations with other experts in the field.
- *Develop sales and marketing capabilities in select cancer markets.* We intend to retain commercial rights to our products in indications and territories where we believe we can effectively market them with a small specialized sales force. For all other indications and territories, we intend to pursue strategic collaborations.

Manufacturing and Supply

The production of glufosfamide, TH-070 and 2DG employs small molecule organic chemistry procedures that are standard for the pharmaceutical industry. We currently rely on contract manufacturers for the manufacture of API and final drug product of glufosfamide, TH-070, 2DG, and any other products or investigational drugs for development and commercial purposes. We intend to continue to use our financial resources to accelerate the development of our product candidates rather than diverting resources to establishing our own manufacturing facilities.

We currently have sufficient supplies of glufosfamide API and drug product to conduct and complete our planned clinical trials, which have been prepared by a subsidiary of Baxter International, Inc. Our supply of glufosfamide has been stable for the past two years; however, should our current supply not remain stable, we may experience a significant delay in the commencement or completion of this trial. We are in the process of qualifying additional vendors to manufacture glufosfamide API and drug product, although we may not be able to do so at acceptable cost or terms, if at all.

We believe that we have sufficient supplies of TH-070 drug product to conduct our ongoing BPH clinical trial. We have ordered additional supplies of API which must be formulated to final drug product by a third-party manufacturer. We have not yet received API or any drug product from these manufacturers, and their failure to perform their obligations could significantly delay commercialization of our TH-070 product candidate.

We believe that we have a sufficient supply of 2DG for our anticipated clinical trials over the next two years.

Sales and Marketing

We intend to build our own sales force to market our cancer drugs and to maintain all commercial rights to our cancer products in the United States and potentially in Europe. Because the United States cancer market is relatively concentrated, we believe we can effectively target it with a small specialized sales force. We intend to pursue strategic collaborations to commercialize our products in other territories for cancer and on a worldwide basis for indications treated by large physician populations, such as BPH. We currently have no marketing, sales or distribution capabilities. In order to commercialize any of our drug candidates, we must develop these capabilities internally or through collaborations with third parties.

License Agreements

Glufosfamide License

In August 2003, we entered into an agreement with Baxter International, Inc. and Baxter Healthcare S.A., together Baxter, for the licensing and development of glufosfamide. Under this agreement, we have an exclusive worldwide license and/or sublicense under Baxter's patent rights, proprietary information and know-how relating to glufosfamide to develop and commercialize products containing glufosfamide for the treatment of cancer. Baxter's patent rights include one issued United States patent and 25 foreign counterparts related to glufosfamide, as well as one foreign patent related to its manufacture. Baxter has agreed to provide us with all of its information related to glufosfamide, including animal study data.

In consideration for our licenses under this agreement, we paid an upfront license fee and one development milestone payment. We are obligated to make certain additional development milestone payments, with the next such payment due in connection with the initiation of a pivotal Phase 3 clinical trial for glufosfamide. Future milestone payments in connection with the development of glufosfamide and United States and foreign regulatory submissions and approvals could equal $9.3 million, and sales-based milestone payments could total up to $17.5 million. Following regulatory approval, we will be obligated to pay royalties to Baxter based on sales of glufosfamide products.

Baxter may terminate this agreement if we:

- fail to initiate a Phase 3 clinical trial for a glufosfamide product for the treatment of cancer before August 2005, or otherwise have failed to meet our obligations under this agreement to develop and commercialize a glufosfamide product and we have not cured this breach within 90 days after receiving a notice from Baxter;
- discontinue development of glufosfamide products for a continuous period of 12 months, in a manner that is inconsistent with our then-current plan to develop glufosfamide products, and we have not cured this breach within 90 days after receiving a notice from Baxter;

- are in material breach of any other term of this agreement, which is not cured within 60 days of any notice by Baxter; or
- become insolvent.

2DG License

In November 2002, we entered into an exclusive license agreement with Dr. Theodore J. Lampidis and Dr. Waldemar Priebe. This agreement gives us exclusive worldwide rights to international patent application US01/07173, to all of its United States counterpart and priority applications, and any United States and foreign patents and patent applications that claim priority from such application. One United States patent licensed under this agreement has been issued. This patent and related pending applications cover the treatment of cancer with 2DG in combination with certain other cancer drugs.

In consideration for this license, we have reimbursed Dr. Lampidis and Dr. Priebe for patent costs and will bear all future patent costs incurred under this agreement. We are also obligated to make certain milestone payments, including milestone payments of up to $700,000 in connection with the filing and approval of a NDA for the first product covered by the licensed patents, as well as royalties based on sales of such products.

Patents and Proprietary Rights

Our policy is to patent the technologies, inventions and improvements that we consider important to the development of our business. As of March 31, 2004, we own or hold exclusive commercial rights to two issued United States patents, 25 issued foreign counterparts of one of these patents, three foreign counterpart applications and a United States continuation of the other of these patents and one additional foreign patent.

Intellectual Property Related to Glufosfamide

Our glufosfamide product candidate is covered by one issued United States patent and 25 foreign counterpart patents, as well as one foreign patent relating to its manufacture. These patents are owned by Baxter, which has exclusively licensed them to us. The major European market counterparts of the United States patent expire in 2009, and the United States patent expires in 2014. Under the Hatch-Waxman Act in the United States, and similar laws in Europe, there are opportunities to extend the term of a patent for up to five years. Although we believe that our glufosfamide product candidate will meet the criteria for patent term extensions, there can be no assurance that we will obtain such extensions. Based on our current clinical timeline, if such an extension were obtained we expect that it would be for approximately three years or less. In addition, we have filed two provisional patent applications describing methods for the identification of patients likely to be responsive to glufosfamide therapy and the use of glufosfamide in combination with gemcitabine to treat cancer.

Intellectual Property Related to TH-070

Our TH-070 product candidate for BPH is protected by one United States patent application and its international counterpart. In addition, we have filed an international patent application that broadly claims the use of glycolytic inhibitors to treat BPH. We also have one international patent application that claims certain combinations of TH-070 chemotherapy drugs for the treatment of cancer.

Intellectual Property Related to 2DG

Our 2DG product candidate is protected by one issued United States patent claiming methods for treating breast cancer with 2DG and either paclitaxel or docetaxel (Taxotere), as well as one pending United States application claiming the use of 2DG in combination with certain other cancer drugs, and three pending foreign counterpart applications. We have licensed exclusive commercial rights to these patents from the inventors. In

addition, we own one pending United States application and its international counterpart claiming methods for dosing, administering and formulating 2DG to treat cancer.

Intellectual Property Related to Our Discovery Research

Our hypoxia-activated prodrugs are protected by one provisional United States patent application and one international patent application claiming the compounds and their use as cancer drugs.

The patent positions of companies like ours are generally uncertain and involve complex legal and factual questions. Our ability to maintain and solidify our proprietary position for our technology will depend on our success in obtaining effective claims and enforcing those claims once granted. We do not know whether any of our patent applications will result in the issuance of any patents. Moreover, any issued patent does not guarantee us the right to practice the patented technology or commercialize the patented product. Third parties may have blocking patents that could be used to prevent us from commercializing our patented products and practicing our patented technology. Our issued patents and those that may be issued in the future may be challenged, invalidated or circumvented, which could limit our ability to stop competitors from marketing related products or the length of the term of patent protection that we may have for our products. In addition, the rights granted under any issued patents may not provide us with proprietary protection or competitive advantages against competitors with similar technology. Furthermore, our competitors may independently develop similar technologies. For these reasons, we may have competition for both our generic and novel products. Moreover, because of the extensive time required for development, testing and regulatory review of a potential product, it is possible that, before any of our products can be commercialized, any related patent may expire or remain in force for only a short period following commercialization, thereby reducing any advantage of the patent.

We also rely on trade secrets, technical know-how and continuing innovation to develop and maintain our competitive position. We seek to protect our proprietary information by requiring our employees, consultants, contractors, outside scientific collaborators and other advisors to execute non-disclosure and assignment of invention agreements on commencement of their employment or engagement. Agreements with our employees also forbid them from using third party trade secret or other confidential information in their work. We also require confidentiality or material transfer agreements from third parties that receive our confidential data or proprietary materials.

The biotechnology and biopharmaceutical industries are characterized by the existence of a large number of patents and frequent litigation based on allegations of patent infringement. While our clinical investigational drugs are in clinical trials, and prior to commercialization, we believe our current clinical activities fall within the scope of the exemptions provided by 35 U.S.C. Section 271(e) in the United States, which covers activities related to developing information for submission to the FDA. As our clinical investigational drugs progress toward commercialization, the possibility of a patent infringement claim against us increases. While we attempt to ensure that our active clinical investigational drugs and the methods we employ to manufacture them and methods for their use do not infringe other parties' patents and other proprietary rights, competitors or other parties may assert that we infringe their proprietary rights.

Competition

We operate in the highly competitive segment of the pharmaceutical market comprised of pharmaceutical and biotechnology companies that research, develop and commercialize products designed to treat cancer. Many of our competitors have significantly greater financial, manufacturing, marketing and product development resources than we do. Large pharmaceutical companies in particular have extensive experience in clinical testing and in obtaining regulatory approval for drugs. These companies also have significantly greater research capabilities than we do. In addition, many universities and private and public research institutes are active in cancer research, some in direct competition with us. We also compete with these organizations to recruit scientists and clinical development personnel.

Competition for our Cancer Product Candidates

Each cancer indication for which we are developing products has a number of established medical therapies with which our candidates will compete. Most major pharmaceutical companies and many biotechnology companies are aggressively pursuing cancer development programs, including traditional therapies and therapies with novel mechanisms of action. Our glufosfamide product candidate for pancreatic cancer will compete with Gemzar, marketed by Lilly, and 5-flurouracil, or 5-FU, which is sold by many manufacturers. In addition, Camptosar®, marketed by Pfizer, and Taxotere, marketed by Aventis, are under investigation as possible combination therapies for first-line treatment, and Orathecin™ from SuperGen, is under NDA review by the FDA for second-line treatment. In markets in which TH-070 is already approved for cancer, it is possible that we may face competition from other manufacturers.

Competition for our BPH Product Candidate

Our TH-070 product candidate for the treatment of BPH will compete with alpha adrenergic receptor blockers, including Flomax®, co-marketed by Boehringer Ingelheim and Abbott Laboratories, and Cardura®, marketed by Pfizer, and with 5-alpha reductase inhibitors, including Proscar®, marketed by Merck, Avodart®, marketed by GlaxoSmithKline, and Xatral®, marketed by Sanofi-Synthélabo. We also will compete with other treatment alternatives such as surgery and other non-drug interventions.

Governmental Regulation and Product Approval

The manufacturing and marketing of our potential products and our ongoing research and development activities are subject to extensive regulation by the FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries.

United States Regulation

Before any of our products can be marketed in the United States, they must secure approval by the FDA. To secure this approval, any drug we develop must undergo rigorous preclinical testing and clinical trials that demonstrate the product candidate's safety and effectiveness for each chosen indication for use. This extensive regulatory process controls, among other things, the development, testing, manufacture, safety, efficacy, record keeping, labeling, storage, approval, advertising, promotion, sale, and distribution of biopharmaceutical products.

In general, the process required by the FDA before investigational drugs may be marketed in the United States involves the following steps:

- pre-clinical laboratory and animal tests;
- submission of an investigational new drug application, or IND, which must become effective before human clinical trials may begin;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed drug for its intended use;
- pre-approval inspection of manufacturing facilities and selected clinical investigators; and
- FDA approval of a new drug application, or NDA, or of a NDA supplement (for subsequent indications).

Preclinical Testing

In the United States, drug candidates are tested in animals until adequate proof of safety is established. These preclinical studies generally evaluate the mechanism of action of the product and assess the potential safety and efficacy of the product. Tested compounds must be produced according to applicable current good manufacturing practice (cGMP) requirements and preclinical safety tests must be conducted in compliance with FDA and international regulations regarding good laboratory practices (GLP). The results of the preclinical

tests, together with manufacturing information and analytical data, are generally submitted to the FDA as part of an investigational new drug application, or IND, which must become effective before human clinical trials may commence. The IND will automatically become effective 30 days after receipt by the FDA, unless before that time the FDA requests an extension or raises concerns about the conduct of the clinical trials as outlined in the application. If the FDA has any concerns, the sponsor of the application and the FDA must resolve the concerns before clinical trials can begin. Submission of an IND may not result in FDA authorization to commence a clinical trial. A separate submission to the existing IND must be made for each successive clinical trial conducted during product development, and the FDA must grant permission for each clinical trial to start and continue. Regulatory authorities may require additional data before allowing the clinical studies to commence or proceed from one Phase to another, and could demand that the studies be discontinued or suspended at any time if there are significant safety issues. Furthermore, an independent institutional review board (IRB) for each medical center proposing to participate in the conduct of the clinical trial must review and approve the clinical protocol and patient informed consent before the center commences the study.

Clinical Trials

Clinical trials for new drug candidates are typically conducted in three sequential phases that may overlap. In Phase 1, the initial introduction of the drug candidate into human volunteers, the emphasis is on testing for safety or adverse effects, dosage, tolerance, metabolism, distribution, excretion, and clinical pharmacology. Phase 2 involves studies in a limited patient population to determine the initial efficacy of the drug candidate for specific targeted indications, to determine dosage tolerance and optimal dosage and to identify possible adverse side effects and safety risks. Once a compound shows evidence of effectiveness and is found to have an acceptable safety profile in Phase 2 evaluations, pivotal Phase 3 trials are undertaken to more fully evaluate clinical outcomes and to establish the overall risk/benefit profile of the drug, and to provide, if appropriate, an adequate basis for product labeling. During all clinical trials, physicians will monitor patients to determine effectiveness of the drug candidate and to observe and report any reactions or safety risks that may result from use of the drug candidate. The FDA, the IRB, or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects are being exposed to an unacceptable health risk.

The data from the clinical trials, together with preclinical data and other supporting information that establishes a drug candidate's safety, are submitted to the FDA in the form of a new drug application, or NDA, or NDA supplement (for approval of a new indication if the product candidate is already approved for another indication). Under applicable laws and FDA regulations, each NDA submitted for FDA approval is usually given an internal administrative review within 45 to 60 days following submission of the NDA. If deemed complete, the FDA will "file" the NDA, thereby triggering substantive review of the application. The FDA can refuse to file any NDA that it deems incomplete or not properly reviewable. The FDA has established internal substantive review goals of six months for priority NDAs (for drugs addressing serious or life threatening conditions for which there is an unmet medical need) and ten months for regular NDAs. The FDA, however, is not legally required to complete its review within these periods, and these performance goals may change over time. Moreover, the outcome of the review, even if generally favorable, is not typically an actual approval, but an "action letter" that describes additional work that must be done before the NDA can be approved. The FDA's review of a NDA may involve review and recommendations by an independent FDA advisory committee. The FDA may deny approval of a NDA or NDA supplement if the applicable regulatory criteria are not satisfied, or it may require additional clinical data and/or an additional pivotal Phase 3 clinical trial. Even if such data are submitted, the FDA may ultimately decide that the NDA or NDA supplement does not satisfy the criteria for approval.

Data Review and Approval

Satisfaction of FDA requirements or similar requirements of state, local, and foreign regulatory agencies typically takes several years and requires the expenditure of substantial financial resources. Information generated in this process is susceptible to varying interpretations that could delay, limit, or prevent regulatory

approval at any stage of the process. Accordingly, the actual time and expense required to bring a product to market may vary substantially. We cannot assure you that we will submit applications for required authorizations to manufacture and/or market potential products or that any such application will be reviewed and approved by the appropriate regulatory authorities in a timely manner, if at all. Data obtained from clinical activities is not always conclusive and may be susceptible to varying interpretations, which could delay, limit, or prevent regulatory approval. Success in early stage clinical trials does not ensure success in later stage clinical trials. Even if a product candidate receives regulatory approval, the approval may be significantly limited to specific disease states, patient populations, and dosages, or have conditions placed on them that restrict the commercial applications, advertising, promotion, or distribution of these products.

Once issued, the FDA may withdraw product approval if ongoing regulatory standards are not met or if safety problems occur after the product reaches the market. In addition, the FDA may require testing and surveillance programs to monitor the effect of approved products which have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs. The FDA may also request additional clinical trials after a product is approved. These so-called Phase 4 studies may be made a condition to be satisfied after a drug receives approval. The results of Phase 4 studies can confirm the effectiveness of a product candidate and can provide important safety information to augment the FDA's voluntary adverse drug reaction reporting system. Any products manufactured or distributed by us pursuant to FDA approvals would be subject to continuing regulation by the FDA, including record-keeping requirements and reporting of adverse experiences with the drug. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with good manufacturing practices, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. We cannot be certain that we or our present or future suppliers will be able to comply with the good manufacturing practices regulations and other FDA regulatory requirements. If our present or future suppliers are not able to comply with these requirements, the FDA may halt our clinical trials, require us to recall a drug from distribution, or withdraw approval of the NDA for that drug. Furthermore, even after regulatory approval is obtained, later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market.

The FDA closely regulates the marketing and promotion of drugs. Approval may be subject to post-marketing surveillance and other record keeping and reporting obligations, and involve ongoing requirements. Product approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems occur following initial marketing. A company can make only those claims relating to safety and efficacy that are approved by the FDA. Failure to comply with these requirements can result in adverse publicity, warning letters, corrective advertising, and potential civil and criminal penalties. Physicians may prescribe legally available drugs for uses that are not described in the product's labeling and that differ from those tested by us and approved by the FDA. Such off-label uses are common across medical specialties. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, restrict manufacturers' communications on the subject of off-label use.

Fast Track Approval

The Federal Food, Drug and Cosmetic Act, as amended, and FDA regulations provide certain mechanisms for the accelerated "Fast Track" approval of potential products intended to treat serious or life-threatening illnesses that have been studied for safety and effectiveness and that demonstrate the potential to address unmet medical needs. The procedures permit early consultation and commitment from the FDA regarding the preclinical and clinical studies necessary to gain marketing approval. Provisions of this regulatory framework also permit, in certain cases, NDAs to be approved on the basis of valid indirect measurements of benefit of product effectiveness, thus accelerating the normal approval process. Certain potential products employing our technology might qualify for this accelerated regulatory procedure. Even if the FDA agrees that these potential

products qualify for accelerated approval procedures, the FDA may deny approval of our drugs or may require additional studies before approval. The FDA may also require us to perform post-approval, or Phase 4, studies as a condition of such early approval. In addition, the FDA may impose restrictions on distribution and/or promotion in connection with any accelerated approval, and may withdraw approval if post-approval studies do not confirm the intended clinical benefit or safety of the potential product.

Orphan Drug Designation

Under the Orphan Drug Act, the FDA may grant orphan drug designation to drugs intended to treat a rare disease or condition, which is generally a disease or condition that affects fewer than 200,000 individuals in the United States. Orphan drug designation must be requested before submitting a NDA. After the FDA grants orphan drug designation, the identity of the therapeutic agent and its potential orphan use are disclosed publicly by the FDA. Orphan drug designation does not convey any advantage in or shorten the duration of the regulatory review and approval process. If a product that has orphan drug designation subsequently receives FDA approval for the disease for which it has such designation, the product is entitled to orphan product exclusivity, which means that the FDA may not approve any other applications to market the same drug for the same disease, except in very limited circumstances, for seven years. These circumstances are an inability to supply the drug in sufficient quantities or a situation in which a new formulation of the drug has shown superior safety or efficacy. This exclusivity, however, also could block the approval of our product for seven years if a competitor obtains earlier approval of the same drug for the same indication.

We intend to file for orphan drug designation for all of our oncology product candidates. Obtaining FDA approval to market a product with orphan drug exclusivity may not provide us with a material commercial advantage.

Drug Price Competition and Patent Term Restoration Act of 1984

Under the Drug Price Competition and Patent Term Restoration Act of 1984, known as the Hatch-Waxman Amendments, a portion of a product's patent term that was lost during clinical development and application review by the FDA may be restored. The Hatch-Waxman Amendments also provide for a statutory protection, known as nonpatent market exclusivity, against the FDA's acceptance or approval of certain competitor applications. The Hatch-Waxman Amendments also provide the legal basis for the approval of abbreviated new drug applications (ANDAs, for generic drugs).

Patent term restoration can compensate for time lost during product development and the regulatory review process by returning up to five years of patent life for a patent that covers a new product or its use. This period is generally one-half the time between the effective date of an IND (falling after issuance of the patent) and the submission date of a NDA, plus the time between the submission date of a NDA and the approval of that application. Patent term restorations, however, are subject to a maximum extension of five years, and the patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years. The application for patent term extension is subject to approval by the United States Patent and Trademark Office in conjunction with the FDA. It takes at least six months to obtain approval of the application for patent term extension. Up to five years of interim one year extensions are available if a product is still undergoing development or FDA review at the time of its expiration.

The Hatch-Waxman Amendments also provide for a period of statutory protection for new drugs that receive NDA approval from the FDA. If a new drug receives NDA approval as a new chemical entity, meaning that the FDA has not previously approved any other new drug containing the same active moiety, then the Hatch-Waxman Amendments prohibit an abbreviated new drug application or a NDA where the applicant does not own or have a legal right of reference to all of the data required for approval (a "505(b)(2)" NDA) to be submitted by another company for a generic version of such drug, with some exceptions, for a period of five years from the date of approval of the NDA. The statutory protection provided pursuant to the Hatch-Waxman Amendments

will not prevent the filing or approval of a full NDA. In order to gain approval of a full NDA, however, a competitor would be required to conduct its own preclinical investigations and clinical trials. If NDA approval is received for a new drug containing an active ingredient that was previously approved by the FDA but the NDA is for a drug that includes an innovation over the previously approved drug, for example, a NDA approval for a new indication or formulation of the drug with the same active ingredient, and if such NDA approval was dependent upon the submission to the FDA of new clinical investigations, other than bioavailability studies, then the Hatch-Waxman Amendments prohibit the FDA from making effective the approval of an ANDA or a 505(b)(2) NDA for a generic version of such drug for a period of three years from the date of the NDA approval. This three year exclusivity, however, only covers the innovation associated with the NDA to which it attaches. Thus, the three year exclusivity does not prohibit the FDA, with limited exceptions, from approving ANDAs or 505(b)(2) NDAs for drugs containing the same active ingredient but without the new innovation.

While the Hatch-Waxman Amendments provide certain patent term restoration and exclusivity protections to innovator drug manufacturers, it also permits the FDA to approve ANDAs for generic versions of their drugs. The ANDA process permits competitor companies to obtain marketing approval for a drug with the same active ingredient for the same uses but does not require the conduct and submission of clinical studies demonstrating safety and effectiveness for that product. Instead of safety and effectiveness data, an ANDA applicant needs only to submit data demonstrating that its product is bioequivalent to the innovator product as well as relevant chemistry, manufacturing and product data. The Hatch-Waxman Amendments also instituted a third type of drug application that requires the same information as a NDA including full reports of clinical and preclinical studies except that some of the information from the reports required for marketing approval comes from studies which the applicant does not own or have a legal right of reference. This type of application (a “505(b)(2) NDA”) permits a manufacturer to obtain marketing approval for a drug without needing to conduct or obtain a right of reference for all of the required studies.

Finally, the Hatch-Waxman Amendments require, in some circumstances, an ANDA or a 505(b)(2) NDA applicant to notify the patent owner and the holder of the approved NDA of the factual and legal basis of the applicant’s opinion that the patent listed by the holder of the approved NDA in FDA’s Orange Book is not valid or will not be infringed (the patent certification process). Upon receipt of this notice, the patent owner and the NDA holder have 45 days to bring a patent infringement suit in federal district court and obtain a 30-month stay against the company seeking to reference the NDA. The NDA holder could still file a patent suit after the 45 days, but if they did, they would not have the benefit of the 30-month stay. Alternatively, after this 45-day period, the applicant may file a declaratory judgment action, seeking a determination that the patent is invalid or will not be infringed. Depending on the circumstances, however, the applicant may not be able to demonstrate a controversy sufficient to confer jurisdiction on the court. The discovery, trial and appeals process in such suits can take several years. If such a suit is commenced, the Hatch-Waxman Act provides a 30-month stay on the approval of the competitor’s ANDA or 505(b)(2) NDA. If the litigation is resolved in favor of the competitor or the challenged patent expires during the 30-month period, unless otherwise extended by court order, the stay is lifted and the FDA may approve the application. Under regulations recently issued by the FDA, and essentially codified under the recent Medicare prescription drug legislation, the patent owner and the NDA holder have the opportunity to trigger only a single 30-month stay per ANDA or 505(b)(2) NDA. Once the ANDA or 505(b)(2) NDA applicant has notified the patent owner and the NDA holder of the infringement, the applicant cannot be subjected to another 30-month stay, even if the applicant becomes aware of additional patents that may be infringed by its product.

Foreign Approvals

In addition to regulations in the United States, we will be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our products. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA

approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

Under European Union regulatory systems, we may submit marketing authorizations either under a centralized or decentralized procedure. The centralized procedure provides for the grant of a single marketing authorization that is valid for all European Union member states. The decentralized procedure provides for mutual recognition of national approval decisions. Under this procedure, the holder of a national marketing authorization may submit an application to the remaining member states. Within 90 days of receiving the applications and assessment report, each member state must decide whether to recognize approval.

The policies of the FDA and foreign regulatory authorities may change and additional government regulations may be enacted which could prevent or delay regulatory approval of our investigational drugs or approval of new diseases for our existing products. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the United States or abroad.

Other Government Regulation

Our research and development activities use biological and hazardous materials that are dangerous to human health and safety or the environment. We are subject to a variety of federal, state and local laws and regulations governing the use, generation, manufacture, storage, handling and disposal of these materials and wastes resulting from these materials. We are also subject to regulation by the Occupational Safety and Health Administration, or OSHA, the California and federal environmental protection agencies and to regulation under the Toxic Substances Control Act. OSHA or the California or federal EPA may adopt regulations that may affect our research and development programs. We are unable to predict whether any agency will adopt any regulations that could have a material adverse effect on our operations. We have incurred, and will continue to incur, capital and operating expenditures and other costs in the ordinary course of our business in complying with these laws and regulations.

Legal Proceedings

We are not currently involved in any material legal proceedings.

Facilities

We sublease approximately 15,000 square feet of laboratory and office space in South San Francisco, California, under an agreement that terminates in December 2004. We intend to relocate to different facilities in the fourth quarter of 2004 and believe that satisfactory facilities will be available.

Employees

As of March 31, 2004 we had 23 employees, including eight who hold Ph.D. or M.D./Ph.D. degrees. Eighteen of our employees are engaged in research and development, and our remaining employees are management or administrative staff. None of our employees is subject to a collective bargaining agreement. We believe that we have good relations with our employees.

MANAGEMENT

Officers and Directors

The following table sets forth, as of April 8, 2004, information about our executive officers and directors.

Name	Age	Position(s)
Executive Officers and Directors		
Harold E. Selick, Ph.D.	49	Chief Executive Officer and Director
George F. Tidmarsh, M.D., Ph.D.	44	Founder, President and Director
Janet I. Swearson	56	Chief Financial Officer, Vice President Finance and Operations
Wilfred E. Jaeger, M.D.[1][2]	48	Director
Michael F. Powell, Ph.D.[1][2][3]	49	Director
Ralph E. Christoffersen, Ph.D.[2][3]	66	Director
Patrick G. Enright[1][3]	42	Director
Significant Employee		
Mark G. Matteucci, Ph.D.	50	Vice President of Discovery

(1) Member of the audit committee
(2) Member of the compensation committee
(3) Member of the nominating and governance committee

Harold E. Selick, Ph.D. joined us as Chief Executive Officer in May 2003. Since June 2002, Dr. Selick has been a Venture Partner of Sofinnova Ventures, Inc., a venture capital firm. From January 1999 to April 2002, he was Chief Executive Officer of Camitro Corporation, a biotechnology company. From 1992 to 1999, he was at Affymax Research Institute, the drug discovery technology development center for Glaxo Wellcome plc, most recently as Vice President of Research. Prior to working at Affymax he held scientific positions at Protein Design Labs, Inc. and Anergen, Inc. Dr. Selick received his B.S. and Ph.D. from the University of Pennsylvania and was a Damon Runyon-Walter Winchell Cancer Fund Fellow and an American Cancer Society Senior Fellow at the University of California, San Francisco.

George F. Tidmarsh, M.D., Ph.D. is our founder and has served as a member of our board of directors and as our President since October 2001. From April 2001 to September 2001, Dr. Tidmarsh was an entrepreneur-in-residence at Three Arch Partners, the venture capital firm that provided initial financing to the company. From October 1996 to December 2000, he held various positions at Coulter Pharmaceuticals, Inc., including chief medical officer from September 1998. Prior to that he held scientific and clinical positions at SEQUUS, Gilead Sciences and SyStemix, Inc. He received his M.D. and Ph.D. from the Stanford University School of Medicine where he also completed fellowships in Pediatric Oncology and Neonatal Intensive Care. In addition, he has been a clinical staff member at Stanford Children's Hospital and El Camino Hospital.

Janet I. Swearson has served as our Chief Financial Officer and Vice President, Finance and Operations since September 2002. From 1999 to 2001, Ms. Swearson was Chief Financial Officer and Vice President, Finance and Operations of Camitro Corporation, a biotechnology company. From 1997 to 1999, she was Chief Financial Officer and Vice President, Finance and Administration of IntraBiotics Pharmaceuticals, Inc., a biotechnology company. From 1991 to 1997, Ms. Swearson served in a variety of positions at Affymax Research Institute, including Vice President, Finance and Operations, Senior Director, Director and Controller. She received her B.A. from the University of Minnesota, Duluth and her M.B.A. from Santa Clara University.

Wilfred E. Jaeger, M.D. has served as a member of our board of directors since 2001. He has been a Partner of Three Arch Partners, a venture capital firm, since 1993. Dr. Jaeger serves as a director of a number of private companies. He received his B.S. from the University of British Columbia, his M.D. from the University of British Columbia School of Medicine and his M.B.A. from Stanford University.

Michael F. Powell, Ph.D. has served as a member of our board of directors since 2001. He has been a Managing Director of Sofinnova Ventures, Inc., a venture capital firm, since 1997. Dr. Powell was Group Leader of Drug Delivery at Genentech, Inc. from 1990 to 1997. From 1987 to 1990, he was the Director of Product Development for Cytel Corporation, a biotechnology firm. He was recently an Adjunct Professor at the University of Kansas and an editorial board member of several pharmaceutical journals. Dr. Powell also serves on the board of directors of Seattle Genetics, Inc. and a number of private companies. He received his B.S. and Ph.D. from the University of Toronto and completed his post-doctorate work at the University of California.

Ralph E. Christoffersen, Ph.D. has served as a member of our board of directors since 2003. He has been a Partner of Morgenthaler Ventures, a private equity firm, since 2001. From 2001 to 2002, he was Chairman of the Board of Ribozyme Pharmaceuticals, Inc., a company involved in developing ribozyme-based therapeutic agents, and from 1992 to 2001, he was Chief Executive Officer and President of Ribozyme Pharmaceuticals. Prior to joining Ribozyme Pharmaceuticals, he was the Senior Vice President of Research at SmithKline Beecham Corporation, Vice President of Discovery Research at The Upjohn Company and President of Colorado State University. Dr. Christoffersen also serves as a director of Serologicals Corp. and a number of private companies. He received his B.S. from Cornell College and his Ph.D. from Indiana University and did his post-doctorate work at Nottingham University, United Kingdom and Iowa State University. He also holds an honorary doctor of law degree from Cornell College.

Patrick G. Enright has served as a member of our board of directors since 2003. He has been a Principal of Pequot Capital Management, Inc., a venture capital firm, and a General Partner of Pequot's venture capital and private equity funds since June 2002. From 1998 to 2001, Mr. Enright was a Managing Member of Diaz & Atschul Group, LLC, a principal investment group. From 1995 to 1998, he served in various executive positions at Valentis, Inc., including Senior Vice President, Corporate Development and Chief Financial Officer. From 1993 to 1994, he was Senior Vice President of Finance and Business Development for Boehringer Mannheim Therapeutics, a pharmaceutical company and a subsidiary of Corange Ltd. From 1989 to 1993, Mr. Enright was employed at PaineWebber Incorporated, an investment banking firm, where he became a Vice President in 1992. Mr. Enright is also currently a director of Valentis, Inc. and a number of private companies. Mr. Enright received his B.S. from Stanford University and his M.B.A. from the Wharton School of Business at the University of Pennsylvania.

Mark G. Matteucci, Ph.D. joined us as Vice President of Discovery in August 2003. From 1999 to 2002, he provided medicinal chemistry consultation to several biotechnology companies. From 1988 to 1999, he was the Director of Bioorganic Chemistry at Gilead Sciences, Inc. where he was the first scientist hired and established that company's research program in nucleic acid targeting. Prior to joining Gilead Sciences. Dr. Matteucci was a scientist at Genentech, Inc. He received his B.S. from the Massachusetts Institute of Technology and Ph.D. from the University of Colorado.

Scientific and Clinical Advisors

The following persons are scientific and clinical advisors to the company:

Member	Affiliation	Specialty
James Abbruzzese, M.D.	MD Anderson Cancer Center	Oncology
Michael Brawer, M.D.	Northwest Prostate Institute	Urology
Stephen Carter, M.D.	Former Head of Worldwide Clinical Development, Bristol-Myers Squibb	Oncology
Stuart Holden, M.D.	Warschaw Prostate Cancer Center, Cedars Sinai Medical Center	Urology
Theodore J. Lampidis, Ph.D.	University of Miami	Tumor Cell Metabolism
Bernard Landau, M.D.	Case Western Reserve University	Metabolism and Biochemistry
Marc Lippman, M.D.	University of Michigan	Oncology
Claus G. Roehrborn, M.D.	University of Texas	Urology
Brian Seed, Ph.D.	Harvard University	Molecular Biology
Jonathan W. Simons, M.D.	Emory University	Hematology and Oncology
Alan Venook, M.D.	University of California, San Francisco	Oncology
Richard Wahl, M.D.	The Johns Hopkins University	Nuclear Medicine, Radiology and Positron Emission Tomography Nuclear Medicine

Board of Directors

We currently have six directors. In accordance with the terms of our amended and restated certificate of incorporation, the terms of office of the directors are divided into three classes:

- the class I directors are Dr. Michael F. Powell and Dr. Ralph E. Christoffersen; their term will expire at the annual meeting of stockholders to be held in 2005.
- the class II directors are Dr. Wilfred E. Jaeger and Dr. George F. Tidmarsh; their term will expire at the annual meeting of stockholders to be held in 2006.
- the class III directors are Mr. Patrick G. Enright and Dr. Harold E. Selick; their term will expire at the annual meeting of stockholders to be held in 2007.

At each annual meeting of stockholders, or special meeting in lieu thereof, after the initial classification of the board of directors, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until the third annual meeting following election or special meeting held in lieu thereof. The authorized number of directors may be changed only by resolution adopted by a majority of the board of directors. This classification of the board of directors may have the effect of delaying or preventing changes in control or management.

Board Committees

Our board of directors has established an audit committee, a compensation committee and a nominating and governance committee.

Audit Committee

Our audit committee consists of Mr. Patrick G. Enright (chair), Dr. Wilfred E. Jaeger and Dr. Michael F. Powell. Our audit committee oversees our corporate accounting and financial reporting process. Our audit committee appoints our independent auditor and oversees and evaluates their work, ensures written disclosures and communicates with the independent auditor, meets with management and the independent auditor to discuss our financial statements, meets with the independent auditor to discuss matters that may affect our financial statements and approves all related party transactions. Mr. Enright will be our audit committee financial expert under the SEC rules implementing Section 407 of the Sarbanes-Oxley Act of 2002. We believe that the composition of our audit committee meets the requirements for independence under the current requirements of the Sarbanes-Oxley Act of 2002, the NASDAQ National Market and SEC rules and regulations. We believe that the functioning of our audit committee complies with the applicable requirements of the Sarbanes-Oxley Act of 2002, the NASDAQ National Market and SEC rules and regulations. We intend to comply with future requirements to the extent they become applicable to us.

Compensation Committee

Our compensation committee consists of Dr. Ralph E. Christoffersen (chair), Dr. Wilfred E. Jaeger and Dr. Michael F. Powell. Our compensation committee will develop and review compensation policies and practices applicable to executive officers, review and recommend goals for our Chief Executive Officer and evaluate his performance in light of these goals, review and evaluate goals and objectives for other officers, oversee and evaluate our equity incentive plans and review and approve the creation or amendment of our equity incentive plans. We believe that the composition of our compensation committee meets the requirements for independence under, and the functioning of our compensation committee complies with, any applicable requirements of the Sarbanes-Oxley Act of 2002, the NASDAQ National Market and SEC rules and regulations. We intend to comply with future requirements to the extent they become applicable to us.

Nominating and Governance Committee

Our nominating and governance committee consists of Dr. Michael F. Powell (chair), Mr. Patrick G. Enright and Dr. Ralph E. Christoffersen. The committee will recommend nominees to the board of directors. Procedures for the consideration of director nominees recommended by stockholders are set forth in our amended and restated bylaws, which will be effective upon completion of this offering.

Director Compensation

We have not provided cash compensation to non-employee directors for their services as directors, but they are entitled to reimbursement for all reasonable out-of-pocket expenses incurred in connection with attendance at board and committee meetings.

Following the completion of this offering, all non-employee directors may receive automatic options grants under the 2004 Equity Incentive Plan as more fully described in the section entitled “Employee Benefit Plans—2004 Equity Incentive Plan.” All employee directors who are not 5% owners of the company will be eligible to participate in our 2004 Employee Stock Purchase Plan, as more fully described in the section entitled “Employee Benefit Plans—2004 Employee Stock Purchase Plan.”

Compensation Committee Interlocks and Insider Participation

Prior to establishing the compensation committee, the board of directors as a whole made decisions relating to compensation of our executive officers. No member of the board of directors or the compensation committee serves as a member of the board of directors or compensation committee of any other entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Limitation of Liability and Indemnification of Officers and Directors

Our amended and restated certificate of incorporation limits the liability of directors to the maximum extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except liability for:

- any breach of their duty of loyalty to the corporation or its stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Our bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by law, including if he or she is serving as a director, officer, employee or agent of another company at our request. We believe that indemnification under our bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in connection with their services to us, regardless of whether our bylaws permit such indemnification.

We have entered into separate indemnification agreements with our directors and executive officers, in addition to the indemnification provided for in our bylaws. These agreements, among other things, provide that we will indemnify our directors and executive officers for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by a director or executive officer in any action or proceeding arising out of such person's services as one of our directors or executive officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers.

There is no pending litigation or proceeding involving any of our directors or executive officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Executive Compensation

The following table summarizes the compensation paid to, awarded to or earned during the year ended December 31, 2003 by our chief executive officer and our other executive officers who were serving as executive officers on December 31, 2003 and whose salary and bonus exceeded $100,000 for services rendered to us in all capacities during the year ended December 31, 2003.

			Long Term Compensation
Name And Principal Position(s)	Year	Annual Compensation Salary	Securities Underlying Options
Harold E. Selick, Ph.D.[1] *Chief Executive Officer*	2003	$ 169,007	764,577
George F. Tidmarsh, M.D., Ph.D.[2] *Founder and President*	2003	$ 200,000	—
Janet I. Swearson[3] *Chief Financial Officer*	2003	$ 238,500	160,000

(1) Harold E. Selick, Ph.D., our Chief Executive Officer, initially served as our part-time Acting Chief Executive Officer, in which capacity he earned $2,340. On May 1, 2003, Dr. Selick converted his position to full-time Chief Executive Officer, earning $166,667 on an annualized salary of $250,000. As of February 1, 2004, Dr. Selick's annual compensation was increased to $300,000. In April 2004, he received a bonus of $210,614.

(2) As of February 1, 2004, Dr. Tidmarsh's annual compensation was increased to $250,000. In April 2004, he received a bonus of $172,250.

(3) Janet I. Swearson, our Chief Financial Officer, initially served as a consultant to the company, in which capacity she earned $99,750. She commenced her employment in April 2003, earning $138,750 on an annualized salary of $185,000. As of February 1, 2004, Ms. Swearson's annual compensation was increased to $220,000. In April 2004, she received a bonus of $72,175.

Option Grants In Year Ended December 31, 2003. The following table sets forth each grant of stock options during the fiscal year ended December 31, 2003 to each of the named executive officers. All options were granted under our 2001 Equity Incentive Plan at an exercise price equal to the fair market value of our common stock, as determined by our board of directors, on the date of grant. The percentage of options granted is based on an aggregate of options to purchase a total of 1,112,577 shares of common stock granted by us during the fiscal year ended December 31, 2003 to our employees. The potential realizable value set forth in the last column of the table is calculated based on the term of the option at the time of grant, which is ten years. This value is based on assumed rates of stock price appreciation of 5% and 10% compounded annually from the date of grant until their expiration date, assuming a fair market value equal to an assumed initial public offering price of $ (which is the midpoint of the range on the cover of this prospectus), minus the applicable exercise price. These numbers are calculated based on the requirements of the SEC and do not reflect our estimate of future stock price growth. Actual gains, if any, on stock option exercises will depend on the future performance of the common stock on the date on which the options are exercised.

					Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
Named Executive Officers	Number of Shares Underlying Options Granted	Percentage of Total Options Granted to Employees	Exercise Price per Share	Expiration Date	5%	10%
Harold E. Selick, Ph.D.[1]	764,577	68.72%	$ 0.10	6/23/2013		
George F. Tidmarsh, M.D., Ph.D.	—					
Janet I. Swearson[2]	160,000	14.38%	$ 0.10	6/23/2013		

(1) Stock options granted to Dr. Selick vested 25% as of the grant date with the remaining shares vesting in equal monthly installments over the following 36 months.

(2) Stock options granted to Ms. Swearson vest in equal monthly installments over four years from the vesting commencement date.

Aggregated Option Exercises During Year Ended December 31, 2003 And Year-End Option Values. The following table sets forth information for each of the named executive officers regarding the number of shares subject to both exercisable and unexercisable stock options, as well as the value of unexercisable in-the-money options, as of December 31, 2003. There was no public trading market for our common stock as of December 31, 2003. Accordingly, the value of the unexercised in-the-money options at fiscal year-end has been calculated by determining the difference between the exercise price per share and the assumed offering price of $ per share, which is the midpoint of the range listed on the cover of this prospectus. None of the named executive officers exercised options during the fiscal year ended December 31, 2003.

	Number of Securities Underlying Unexercised Options at December 31, 2003		Value of Unexercised In-The-Money Options at December 31, 2003	
Named executive officers	Exercisable	Unexercisable	Exercisable	Unexercisable
Harold E. Selick, Ph.D.	906,139	—	$	$
George F. Tidmarsh, M.D., Ph.D.	882,500	—	$	$
Janet I. Swearson	169,750	—	$	$

Employee Benefit Plans

2001 Equity Incentive Plan

Our 2001 Equity Incentive Plan, as amended, was adopted by our board of directors and approved by our stockholders. This plan provides for the grant of shares of stock, incentive stock options and nonstatutory stock options to employees, directors and consultants. Under this plan, we are authorized to grant shares and stock options for the purchase of up to a maximum of 7,000,000 shares of our common stock. Our board of directors has authorized the compensation committee to administer this plan. This plan terminates on December 2, 2011.

Upon a merger or sale of all or substantially all of our assets or shares of stock, the successor entity may provide for (i) the assumption of the outstanding stock options, (ii) substitution for any outstanding options of new options to purchase shares of the successor entity, or (iii) the accelerated vesting and immediate exercisability of the outstanding options. The acquiring entity may pursue any one or a combination of the actions specified above.

As of December 31, 2003:

- 2,949,397 shares were issuable upon exercise of outstanding options granted under this plan at a weighted average exercise price of $0.10;
- 16,702 shares were issued upon exercise of options at purchase prices of $0.10 per share; and
- 4,033,901 shares of our common stock remained available for future grants under this plan.

All share numbers reflected in this summary, as well as the exercise price or purchase price applicable to outstanding options or purchase rights, will be automatically proportionately adjusted in the event we make certain changes in our capital structure, such as a stock split, reverse stock split, stock dividend or other similar transaction.

2004 Equity Incentive Plan

In April 2004, our board of directors approved the 2004 Equity Incentive Plan, or 2004 Plan, which, subject to approval by our stockholders, will become effective upon the completion of this offering. The 2004 Plan will terminate in 2014 unless it is terminated earlier by our board.

Stock options, stock appreciation rights, or SARs, stock awards and cash awards may be granted under the 2004 Plan. Each is referred to as an award in the 2004 Plan. Options granted under the 2004 Plan may be either

"incentive stock options," as defined under Section 422 of the Internal Revenue Code of 1986, as amended, or nonstatutory stock options.

Share Reserve. We have reserved a total of 4,000,000 shares of our common stock, plus the shares described below, for issuance under the 2004 Plan, all of which are available for future grant. Awards generally shall not reduce the share reserve until the earlier of vesting or the delivery of the shares pursuant to an award. Shares reserved under the plan also include (i) shares of common stock available for issuance as of the effective date of this offering under the 2001 Equity Incentive Plan, including the shares subject to outstanding awards under the 2001 Equity Incentive Plan, plus (ii) shares of common stock issued under the 2001 Equity Incentive Plan or the 2004 Plan that are forfeited or repurchased by the Company at or below the original purchase price or that are issuable upon exercise of awards granted pursuant to the 2001 Equity Incentive Plan or the 2004 Plan that expire or become unexercisable for any reason without having been exercised after the effective date of this offering, plus (iii) shares of common stock that are restored by our board or its compensation committee pursuant to provisions in the 2004 Plan that permit options to be settled in shares on a net appreciation basis at our election.

Automatic Annual Increase of Share Reserve. The 2004 Plan provides that the share reserve will be cumulatively increased on January 1 of each year, beginning January 1, 2005 and for nine years thereafter, by a number of shares that is equal to the lesser of (a) 5% of the number of our company's shares issued and outstanding prior to the preceding December 31, (b) 2,000,000 shares and (c) a number of shares set by our board.

Automatic Grants. The 2004 Plan provides that persons who first become non-employee directors after the effective date of this offering will be automatically granted options under the 2004 Plan in the following amounts: (a) an option to purchase shares of our common stock upon their initial appointment to our board, and (b) commencing in 2005 and provided that such individual has served as a non-employee director for at least six months, an option to purchase shares annually thereafter.

Administration. The 2004 Plan will be administered by the Compensation Committee of our board of directors or a delegated officer in certain instances. The Compensation Committee or officer is referred to in the 2004 Plan as the administrator.

Eligibility. Awards under the 2004 Plan may be granted to our employees, directors and consultants. Incentive stock options may be granted only to our employees. The administrator, in its discretion, approves awards granted under the 2004 Plan.

Termination of Awards. Generally, if an awardee's service to us terminates other than by reason of death, disability, retirement or for cause, vested options and SARs will remain exercisable for a period of three months following the termination of the awardee's service. Unless otherwise provided for by the administrator in the award agreement, if an awardee dies or becomes totally and permanently disabled while an employee or consultant or director, the awardee's vested options and SARs will be exercisable for one year following the awardee's death or disability, or if earlier, the expiration of the term of such award.

Nontransferability of Awards. Unless otherwise determined by the administrator, awards granted under the 2004 Plan are not transferable other than by will, a domestic relations order, or the laws of descent and distribution and may be exercised during the awardee's lifetime only by the awardee.

Stock Options

Exercise Price. The administrator determines the exercise price of options at the time the options are granted. The exercise price of an incentive stock option may not be less than 100% of the fair market value of the our common stock on the date of grant. The exercise price of a nonstatutory stock option may not be less than 85% of the fair market value of our common stock on the date of grant. The fair market value of our common stock will generally be the closing sales price as quoted on the NASDAQ National Market.

Exercise of Option; Form of Consideration. The administrator determines when options become exercisable. The means of payment for shares issued on exercise of an option are specified in each award agreement. The 2004 Plan permits payment to be made by any lawful means including cash, check, wire transfer, other shares of our common stock (with some restrictions), broker-assisted same day sales or cancellation of any debt owed by us or any of our affiliates to the optionholder or in certain instances a delivery of cash or stock for any net appreciation.

Term of Options. The term of an option may be no more than ten years from the date of grant. No option may be exercised after the expiration of its term. Any incentive stock option granted to a ten percent stockholder may not have a term of more than five years.

Stock Appreciation Rights. The administrator may grant SARs alone, in addition to, or in tandem with, any other awards under this plan. An SAR entitles the participant to receive the amount by which the fair market value of a specified number of shares on the exercise date exceeds an exercise price established by the administrator. The excess amount will be payable in ordinary shares, in cash or in a combination thereof, as determined by the administrator. The terms and conditions of an SAR will be contained in an award agreement. The grant of an SAR may be made contingent upon the achievement of objective performance conditions.

Stock Awards. The administrator may grant stock awards such as bonus stock, restricted stock or restricted stock units. Generally such awards will contain vesting features such that awards will either not be delivered, or may be repurchased by the Company at cost, if the vesting requirements are not met. The administrator will determine the vesting and share delivery terms. In the case of restricted stock units the administrator may in its discretion offer the awardee the right to defer delivery. Stock awards may be settled in cash or stock as determined by the administrator.

2004 Employee Stock Purchase Plan

General. On April 7, 2004, our board adopted the 2004 Employee Stock Purchase Plan (the "Purchase Plan"). Subject to approval by our stockholders, the Purchase Plan will become effective on the first day on which price quotations become available for our common stock on the NASDAQ National Market. The Purchase Plan provides our employees with an opportunity to purchase our common stock through accumulated payroll deductions.

Share Reserve. A total of shares of common stock has been reserved for issuance under the Purchase Plan. In addition, the Purchase Plan provides for annual increases in the total number of shares available for issuance under the Purchase Plan on January 1 of each year, by a number of shares that is equal to the least of:

- 1% of the outstanding shares of our common stock on that date;
- shares; or
- a lesser number as determined by the Compensation Committee of our board prior to such January 1.

Administration. The Compensation Committee appointed by our board, administers the Purchase Plan and has full and exclusive authority to interpret the terms of the Purchase Plan and determine eligibility, subject to the limitations of Section 423 of the Code or any successor provision in the Code.

Eligibility. Persons are eligible to participate in the Purchase Plan if they are employed by us or any participating subsidiary for more than 20 hours per week for more than five months in any calendar year. However, no person may participate in the Purchase Plan if, immediately after the grant of the stock purchase rights under the Purchase Plan, such person will own stock possessing five percent or more of the total combined voting power or value of all classes of our capital stock or of any participating subsidiary.

Offering Periods. The Purchase Plan provides for offering periods of 24 months or such shorter period as may be established by the Compensation Committee. The Purchase Plan includes four six-month purchase periods unless otherwise provided by the Compensation Committee. The initial offering and purchase periods commence on the first day on which price quotations for our common stock first become available on the NASDAQ National Market. The initial offering period will end February 14, 2006 and the initial purchase period will end February 14, 2005. Additional offering periods start on either February 15 or August 15 of each year and end on August 14 or February 14 of each year.

Payroll Deductions. The Purchase Plan permits participants to purchase our common stock through payroll deductions of between 1% and 15% of the participant's compensation under the Purchase Plan, up to a maximum of $21,250 per year, and up to a maximum of 2,500 shares per purchase period. Compensation includes regular salary payments, bonuses, incentive compensation, overtime pay and other compensation as determined from time to time by the board, but excludes all other payments including long-term disability or workers' compensation payments, car allowances, relocation payments and expense reimbursements.

Purchase Price. Amounts deducted and accumulated for the participant's account are used to purchase shares of our common stock on the last trading day of each purchase period at a price of 85% of the lower of the fair market values of the common stock at the beginning of the offering period and the end of the purchase period without interest. Participants may end their participation at any time during an offering period, and they will be paid their payroll deductions accumulated to that date. Participation ends automatically upon termination of employment and payroll deductions credited to the participant's account are returned to the participant without interest.

Qualification under the Code. The 2004 Purchase Plan is intended to qualify as an "employee stock purchase plan" under Section 423 of the Code.

Nontransferability. Stock purchase rights granted under the Purchase Plan are not transferable by a participant other than by will or the laws of descent and distribution. Shares purchased under the plan can be disposed of upon the provision of a notice.

Change in Control. In the event of a merger or other corporate transaction, the Purchase Plan will continue for the remainder of all open offering periods that commenced prior to the closing of the merger or other corporate transaction and shares will be purchased based on the fair market value of the surviving corporation's stock on each purchase date (taking account of the exchange ratio where necessary) unless otherwise determined by the Compensation Committee. In the event of a dissolution or liquidation of our company, the offering period will terminate immediately prior to the event, unless otherwise determined by the Compensation Committee. In exercising its discretion, the Compensation Committee may terminate the Purchase Plan after notice to participants.

Amendment and Termination. The board has the authority to amend or terminate the Purchase Plan at any time, including amendments to outstanding stock purchase rights under these plan, subject to required approvals of our stockholders in order for the Purchase Plan to qualify under Section 423 of the Code or other applicable law.

401(k) Plan

We have established and maintained a retirement savings plan under section 401(k) of the Code to cover our eligible employees. The Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a tax deferred basis through contributions to the 401(k) plan. Our 401(k) plan is qualified under Section 401(a) of the Code and its associated trust is exempt from federal income taxation under Section 501(a) of the Code. Our 401(k) permits us to make matching contributions on behalf of eligible employees; however, we currently do not make these matching contributions.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a description of transactions:

- to which we are a party;
- in which the amount involved exceeds $60,000; and
- in which any director, executive officer or holder of more than 5% of our capital stock had or will have a direct or indirect material interest.

Preferred Stock Issuances

On October 29, 2001 and February 7, 2002, we sold an aggregate of 7,500,000 shares of Series A preferred stock at a price per share of $0.10, for an aggregate purchase price of $0.8 million. On August 15, 2002, we affected a 1:10 reverse stock split of our capital stock and sold an additional 8,250,000 shares (post-stock split) of Series A preferred stock at a price per share of $1.00, for an aggregate purchase price of $8.3 million. Following the reverse stock split and the August 15, 2002 sale of additional shares of Series A preferred stock, we had 9,000,000 shares of Series A preferred stock issued and outstanding. On November 17, 2003, we sold an aggregate of 24,848,484 shares of Series B preferred stock at a price per share of $1.65, for an aggregate purchase price of $41.0 million. Each share of Series A preferred stock and Series B preferred stock will convert automatically into one share of common stock upon the closing of this offering.

The following holders of more than 5% of our securities purchased securities in our preferred stock financings in the amounts and as of the dates shown below.

Investor	Series A Preferred Stock	Series B Preferred Stock
Entities affiliated with Morgenthaler Ventures[1]	—	5,454,545
Entities affiliated with Pequot Capital Management, Inc.[2]	—	5,454,545
Entities affiliated with ProQuest Investments	2,250,000	3,030,303
Entities affiliated with Sofinnova Ventures, Inc.[3]	2,250,000	3,030,303
Entities affiliated with Three Arch Partners[4]	2,250,000	3,030,303
Entities affiliated with Sutter Hill Ventures	1,589,079	2,140,175
Total	8,339,079	22,140,174

(1) Ralph E. Christoffersen, one of our directors, is a Partner of Morgenthaler Ventures.
(2) Patrick G. Enright, one of our directors, is a Partner of Pequot Capital Management, Inc.
(3) Michael F. Powell, one of our directors, and Harold E. Selick, our Chief Executive Officer and one of our directors, are a Managing Director and Venture Partner, respectively, of Sofinnova Ventures, Inc.
(4) Wilfred E. Jaeger, one of our directors, is a Partner of Three Arch Partners. Additionally, George F. Tidmarsh, our President and one of our directors, served as an entrepreneur-in-residence at Three Arch Partners immediately prior to our inception.

Shares held by all affiliated persons and entities have been aggregated. For additional details on the shares held by each of these purchasers, please refer to the information in this prospectus under the heading “Principal Stockholders.” Each share of preferred stock will convert automatically into common stock upon the closing of this offering. The purchasers of these shares are entitled to certain registration rights. See “Description of Capital Stock—Registration Rights.”

Other Related Party Transactions and Business Relationships

Harold E. Selick has served as a venture partner of Sofinnova Ventures, Inc., a holder of more than 5% of our common stock, since June 2002. In 2003, Dr. Selick received $152,083.36 in compensation from Sofinnova Ventures, Inc. Dr. Selick also has a carried interest in a company in which Sofinnova Ventures, Inc. is an investor.

On September 9, 2002, we entered into a consulting agreement with Janet I. Swearson, our Chief Financial Officer. Under the agreement, Ms. Swearson agreed to provide us with financial consulting in exchange for $1,500 a day and a grant of an option to purchase 9,750 shares of our common stock. The agreement was terminated in April 2003 when Ms. Swearson commenced her full-time employment with us as our Chief Financial Officer.

Our amended and restated certificate of incorporation and bylaws provide that we will indemnify each of our directors and officers to the fullest extent permitted by Delaware Law. Further, we have entered into separate indemnification agreements with each of our directors and executive officers. For further information, see "—Limitation of Liability and Indemnification of Officers and Directors."

In connection with the sale of our Series B preferred stock, we entered into an Amended and Restated Investors Rights Agreement with the purchasers of such stock granting them certain registration rights. For further information, see "Description of Capital Stock."

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding beneficial ownership of our common stock as of December 31, 2003, and as adjusted to reflect the sale of shares of our common stock offered by this prospectus, by:

- each of our directors and the named executive officers;
- all of our directors and executive officers as a group; and
- each person or group of affiliated persons known by us to be the beneficial owner of more than 5% of our common stock.

Beneficial ownership and percentage ownership are determined in accordance with the rules of the SEC and includes voting or investment power with respect to shares of stock. This information does not necessarily indicate beneficial ownership for any other purpose. Under these rules, shares of common stock issuable under stock options that are exercisable within 60 days of December 31, 2003 are deemed outstanding for the purpose of computing the percentage ownership of the person holding the options but are not deemed outstanding for the purpose of computing the percentage ownership of any other person.

Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over their shares of common stock, except for those jointly owned with that person's spouse. Percentage of beneficial ownership before the offering is based on 34,152,686 shares of common stock outstanding as of December 31, 2003 assuming the conversion of all of our outstanding convertible preferred stock and shares of common stock immediately outstanding after completion of this offering. Unless otherwise noted below, the address of each person listed on the table is c/o Threshold Pharmaceuticals, Inc., 951 Gateway Boulevard, South San Francisco, CA 94080-7024.

Name And Address Of Beneficial Owner	Number of Shares Beneficially Owned Prior to Offering	Percent Of Shares Beneficially Owned	
		Before Offering	After Offering
Holders of more than 5% of our voting securities			
Entities affiliated with Morgenthaler Partners VII, L.P.[1] 2710 Sand Hill Road Suite 100 Menlo Park, CA 94025	5,454,545		
Pequot Capital Management, Inc.[2] 2500 Sand Hill Road Menlo Park, CA 94025	5,454,545		
Entities affiliated with ProQuest Investments[3] 12626 High Bluff Drive Suite 360 San Diego, California 92130	5,280,303		
Entities affiliated with Sofinnova Ventures, Inc.[4] 140 Geary Street Tenth Floor San Francisco, CA 94108	5,280,303		
Entities affiliated with Three Arch Partners[5] 3200 Alpine Road Portola Valley, CA 94028	5,280,303		
Entities affiliated with Sutter Hill Ventures[6] 755 Page Mill Road, Suite A-200 Palo Alto, CA 94304-1005	3,729,254		

Name And Address Of Beneficial Owner	Number of Shares Beneficially Owned Prior to Offering	Percent Of Shares Beneficially Owned	
		Before Offering	After Offering
Directors and Named Executive Officers			
Harold E. Selick, Ph.D.[7]	906,139		
George F. Tidmarsh, M.D., Ph.D.[8]	1,132,500		
Janet I. Swearson[9]	169,750		
Ralph E. Christoffersen[10]	5,454,545		
Patrick G. Enright[11]	5,454,545		
Wilfred E. Jaeger[12]	5,280,303		
Michael F. Powell[13]	5,280,303		
All directors and executive officers as a group (7 persons)[14]	23,678,085		

(1) Includes 5,454,545 shares held by Morgenthaler Partners VII, L.P. (MP VII), of which Ralph E. Christoffersen is a member of the entity's Managing Partner, Morgenthaler Management Partners VII, LLC (MMP VII). Dr. Christoffersen shares voting power over the shares with the other members of MMP VII. The natural persons who have voting or investment power over the shares held of record by MP VII are Robert C. Bellas, Jr., Greg E. Blonder, James W. Broderick, Ralph E. Christoffersen, Andrew S. Lanza, Theodore A. Laufik, Paul H. Levine, Gary R. Little, John D. Lutsi, Gary J. Morgenthaler, Robert D. Pavey, G. Gary Shaffer, Peter G. Taft. Dr. Christoffersen disclaims beneficial ownership of the shares held by MP VII except to the extent of his pecuniary interest therein.

(2) Includes shares beneficially owned by Pequot Capital Management, Inc., the investment manager of Pequot Private Equity Fund III, L.P., the holder of record of 4,780,631 shares, and Pequot Offshore Private Equity Partners III, L.P., the holder of record of 673,914 shares. Pequot Capital Management, Inc. holds voting and dispositive power for all shares held by Pequot Private Equity Fund III, L.P., and Pequot Offshore Private Equity Partners III, L.P. (collectively, the "Funds"). Patrick G. Enright is a Principal of Pequot Capital Management, Inc. and a general manager of each of the Funds. Mr. Enright serves as a member of our board of directors and may be deemed to beneficially own the securities held of record by the Funds. Mr. Enright disclaims beneficial ownership of the shares held by the Funds, except to the extent of his pecuniary interest therein.

(3) Includes 5,067,507 shares held of record ProQuest Investments II, L.P. and 212,796 shares held of record by ProQuest Investments II Advisors Fund, L.P. The natural persons affiliated with ProQuest Investments who have voting or investment power over these shares are Joyce Tsang, Jay Moorin, Alain Schreiber and Pasquale DeAngelis.

(4) Includes 5,040,990 shares of record held by Sofinnova Venture Partners V, LP, 165,731 shares of record held by Sofinnova Venture Affiliates V, LP, and 5,280,303 held by Sofinnova Venture Principals V, LP. The natural person affiliated with Sofinnova Ventures, Inc. who has voting or investment power over these shares is Michael F. Powell. Dr. Powell disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(5) Includes 5,010,946 shares of record held by Three Arch Partners III, L.P. and 269,357 shares of record held by Three Arch Associates III, L.P. Wilfred E. Jaeger, who serves as a member of our board of directors, is a member of Three Arch Capital Management III, L.L.C., which is the general partner for Three Arch Partners III, L.P. and Three Arch Associates III, L.P. Dr. Jaeger disclaims beneficial ownership of shares held by Three Arch Partners III, L.P., Three Arch Associates III, L.P. and Three Arch Capital Management III, L.L.C., except to the extent of his pecuniary interest therein.

(6) Includes 92,354 shares held by Sutter Hill Entrepreneurs Fund (AI), L.P.; 36,474 shares held by Sutter Hill Entrepreneurs Fund (QP), L.P.; 3,600,426 shares held by Sutter Hill Ventures, a California Limited Partnership, over which a managing director of the general partner of the partnerships mentioned herein, shares voting and investment power with seven other managing directors of the general partner of the partnerships mentioned herein; and 1,346,133 shares held of record by seven other managing directors, and their related family entities. The natural persons who have voting or investment power over the shares held

of record by Sutter Hill Ventures are David L. Anderson, G. Leonard Baker, Jr., William H. Younger, Jr., Tench Coxe, Gregory P. Sands, James C. Gaither, Jeffrey W. Bird, and James N. White.

(7) Comprised of 906,139 shares issuable pursuant to options exercisable within 60 days of December 31, 2003.

(8) Includes 1,132,500 shares issuable pursuant to options exercisable within 60 days of December 31, 2003.

(9) Comprised of 169,750 shares issuable pursuant to options exercisable within 60 days of December 31, 2003.

(10) Includes 5,454,545 shares held of record by Morgenthaler Partners VII, L.P. (MP VII). Dr. Ralph E. Christoffersen, a member of our board of directors and a Managing Member of MP VII, shares voting or investment power over these shares with Robert C. Bellas, Jr., Greg E. Blonder, James W. Broderick, Andrew S. Lanza, Theodore A. Laufik, Paul H. Levine, Gary R. Little, John D. Lutsi, Gary J. Morgenthaler, Robert D. Pavey, G. Gary Shaffer, Peter G. Taft. Dr. Christoffersen disclaims beneficial ownership in these shares, except to the extent of his pecuniary interest.

(11) Includes shares beneficially owned by Pequot Capital Management, Inc., the investment manager of Pequot Private Equity Fund III, L.P., the holder of record of 4,780,631 shares, and Pequot Offshore Private Equity Partners III, L.P., the holder of record of 673,914 shares. Pequot Capital Management, Inc. holds voting and dispositive power for all shares held by Pequot Private Equity Fund III, L.P., and Pequot Offshore Private Equity Partners III, L.P. (collectively, the “Funds”). Patrick G. Enright is a Principal of Pequot Capital Management, Inc. and a general manager of each of the Funds. Mr. Enright serves as a member of our board of directors and may be deemed to beneficially own the securities held of record by the Funds. Mr. Enright disclaims beneficial ownership of the shares held by the Funds, except to the extent of his pecuniary interest.

(12) Includes 5,280,303 shares held of record by Three Arch Partners III, L.P. and Three Arch Associates III, L.P. Wilfred E. Jaeger, who serves as a member of our board of directors, is a member of Three Arch Capital Management III, L.L.C., which is the general partner for Three Arch Partners III, L.P. and Three Arch Associates III, L.P. Dr. Jaeger disclaims beneficial ownership of shares held by Three Arch Partners III, L.P., Three Arch Associates III, L.P. and Three Arch Capital Management III, L.L.C., except to the extent of his pecuniary interest therein.

(13) Includes 5,280,303 shares held of record by Sofinnova Venture Partners V, LP, Sofinnova Venture Affiliates V, LP and Sofinnova Venture Principals V, LP. Michael F. Powell, a member of our board of directors and a Managing Member of Sofinnova Venture Partners, has voting or investment power over these shares.

(14) Total number of shares includes common stock held by entities affiliated with directors and executive officers. See footnotes 1 through 13 above.

DESCRIPTION OF CAPITAL STOCK

The description below of our capital stock and provisions of our amended and restated certificate of incorporation and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the amended and restated bylaws that will become effective upon closing of this offering. These documents will be filed as exhibits to the registration statement of which this prospectus is a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will occur upon the closing of this offering.

Our amended and restated certificate of incorporation, which will become effective upon the closing of this offering, authorizes the issuance of up to 150,000,000 shares of common stock, par value $0.001 per share, and 2,000,000 shares of preferred stock, par value $0.001 per share. The rights and preferences of the preferred stock may be established from time to time by our board of directors.

- As of December 31, 2003, 323,993 shares of common stock were issued and outstanding, 33,848,484 shares of preferred stock convertible into 33,848,484 shares of common stock upon the completion of this offering and a warrant to purchase 38,000 shares of preferred stock were issued and outstanding.
- As of December 31, 2003, we had six common stockholders of record and 46 preferred stockholders of record.
- Immediately after the closing of this offering, we will have approximately shares of common stock outstanding, assuming no exercise of the underwriters' over-allotment option and no exercise of options to acquire additional shares of common stock.

Common Stock

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, except matters that relate only to one or more of the series of preferred stock and each holder does not have cumulative voting rights. Accordingly, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose.

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by the board of directors out of legally available funds. In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any outstanding shares of preferred stock.

Holders of common stock have no preemptive or conversion rights or other subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are, and the shares of common stock offered by us in this offering, when issued and paid for, will be fully paid and nonassessable. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate in the future.

Preferred Stock

Upon the closing of this offering, our board of directors will be authorized, subject to any limitations prescribed by law, without stockholder approval, to issue up to an aggregate of 2,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions granted to or imposed upon the preferred stock, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences. The rights of the holders of common stock will be subject to, and may be adversely

affected by, the rights of holders of any preferred stock that may be issued in the future. Issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of delaying, deferring or preventing a change in control of us. We have no present plans to issue any shares of preferred stock.

Warrant

On March 27, 2003, in connection with our loan and security agreement with Silicon Valley Bank, we issued to Silicon Valley Bank a warrant to purchase 38,000 shares of our common stock at an exercise price of $1.00 per share. The warrant expires on the later of March 27, 2013 or seven years after the closing to this public offering.

Options

We intend to file a registration statement under the Securities Act covering shares of common stock reserved for issuance under our 2001 Equity Incentive Plan, 2004 Equity Incentive Plan and 2004 Employee Stock Purchase Plan. That registration statement is expected to become effective upon filing with the SEC. Accordingly, common stock registered under that registration statement will, subject to vesting provisions and limitations as to the volume of shares that may be held by our affiliates under the Rule 144 described above, be available for sale in the open market unless the holder is subject to the 180-day lock-up period.

As of December 31, 2003, options to purchase 2,949,397 shares of common stock were issued and outstanding at a weighted average exercise price of $0.10 per share.

Registration Rights

We and the holders of our preferred stock entered into an amended and restated investor rights agreement, dated November 17, 2003. This agreement provides these holders with customary demand and piggyback registration rights with respect to the shares of common stock to be issued upon conversion of their preferred stock.

Pursuant to the terms of our warrant issued to Silicon Valley Bank, Silicon Valley Bank has customary piggyback registration rights with respect to the shares of common stock to be issued upon exercise of its warrant.

Demand Registration

According to the terms of the amended and restated investor rights agreement, holders of 75% of the common stock of the company issued or issuable upon conversion of the outstanding preferred stock of the company (not including common stock sold to the public under Rule 144, pursuant to a registration statement or held by a holder not having rights under the amended and restated investor rights agreement) have the right to require us to register their shares with the SEC for resale to the public. To demand such a registration, holders who hold together an aggregate of at least 75% of the shares held by persons with such registration rights pursuant to that agreement must request a registration statement to register at least a majority of all shares held by persons with such registration rights. We are not required to effect more than two demand registrations. We have currently not effected, or received a request for, any demand registrations. No demands for registration may be made until the later of 180 days following the later of the effective date of the registration statement of which this prospectus is a part and completion of the distribution of this offering.

Piggyback Registration

If we file a registration statement for a public offering of any of our securities solely for cash, other than a registration statement relating solely to our stock plans, the holders of demand registration rights will have the right to include their shares in the registration statement. The holders of the warrant to purchase preferred stock has piggyback registration rights as well.

Form S-3 Registration

At any time after we become eligible to file a registration statement on Form S-3, the holders of preferred stock having both demand and piggyback registration rights may require us to file a Form S-3 registration statement. We are obligated to file only two Form S-3 registration statement in any twelve-month period. Furthermore, the aggregate offering proceeds of the requested Form S-3 registration, before deducting underwriting discounts and expenses, must be at least $1,000,000.

These registration rights are subject to certain conditions and limitations, including the right of the underwriters of an offering to limit the number of shares of common stock to be included in the registration. We are generally required to bear the expenses of all registrations, except underwriting discounts and commissions. However, we will not pay for any expenses of any demand or S-3 registration if the request is subsequently withdrawn by the holders who requested such registration unless the withdrawal is based on material adverse information about the company not available at the time of the registration request or the right to demand one registration is forfeited by all holders of the right. The investors rights agreement also contains our commitment to indemnify the holders of registration rights for losses attributable to statements or omissions by us incurred with registrations under the agreement.

Effect of Certain Provisions of our Amended and Restated Certificate of Incorporation and Bylaws and the Delaware Anti-Takeover Statute

Amended and Restated Certificate of Incorporation and Bylaws

Some provisions of Delaware law and our amended and restated certificate of incorporation and bylaws contain provisions that could make the following transactions more difficult:

- acquisition of us by means of a tender offer;
- acquisition of us by means of a proxy contest or otherwise; or
- removal of our incumbent officers and directors.

These provisions, summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids and to promote stability in our management. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors.

- *Undesignated Preferred Stock.* The ability to authorize undesignated preferred stock makes it possible for our board of directors to issue one or more series of preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.
- *Stockholder Meetings*. Our charter documents provide that a special meeting of stockholders may be called only by the chairman of the board or by our president, or by a resolution adopted by a majority of our board of directors.
- *Requirements for Advance Notification of Stockholder Nominations and Proposals.* Our bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.
- *Elimination of Stockholder Action by Written Consent.* Our amended and restated certificate of incorporation eliminates the right of stockholders to act by written consent without a meeting.
- *Amendment of Bylaws*. Any amendment of our bylaws by our stockholders requires approval by holders of at least 66⅔% of our then outstanding common stock, voting together as a single class.

- *Staggered Board.* Our amended and restated certificate of incorporation provide for the division of our board of directors into three classes, as nearly equal in size as possible, with staggered three-year terms. Under our amended and restated certificate of incorporation and amended and restated bylaws, any vacancy on the board of directors, including a vacancy resulting from an enlargement of the board, may only be filled by vote of a majority of the directors then in office. The classification of the board of directors and the limitations on the removal of directors and filling of vacancies would have the effect of making it more difficult for a third party to acquire control of us, or of discouraging a third party from acquiring control of us.
- *Amendment of Amended and Restated Certificate of Incorporation.* Amendments to certain provisions of our amended and restated certificate of incorporation require approval by holders of at least 66 2/3% of our then outstanding common stock, voting together as a single class.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law. This law prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned by persons who are directors and also officers and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines "business combination" to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of our assets involving the interested stockholder;
- in general, any transaction that results in the issuance or transfer by us of any of our stock to the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Limitation of Liability

Our amended and restated certificate of incorporation provides that no director shall be personally liable to us or to our stockholders for monetary damages for breach of fiduciary duty as a director, except that the limitation shall not eliminate or limit liability to the extent that the elimination or limitation of such liability is not permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended.

The NASDAQ National Market

We have applied to list our common stock on the NASDAQ National Market under the symbol "THLD."

Transfer Agent and Registrar

Upon the closing of this offering, the transfer agent and registrar for our common stock will be .

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and we cannot predict the effect, if any, that market sales of shares or the availability of any shares for sale will have on the market price of the common stock prevailing from time to time. Sales of substantial amounts of our common stock (including shares issued on the exercise of outstanding options and warrants), or the perception that such sales could occur, could adversely affect the market price of our common stock and our ability to raise capital through a future sale of our securities.

Upon completion of this offering, shares of common stock will be outstanding, assuming the issuance of an aggregate of shares of common stock in this offering. The number of shares outstanding after this offering is based on the number of shares outstanding as of December 31, 2003 and assumes no exercise of outstanding options. The shares sold in this offering will be freely tradable without restriction under the Securities Act, unless those shares are purchased by affiliates as that term is defined in Rule 144 under the Securities Act.

The remaining 34,172,476 shares of common stock held by existing stockholders are restricted shares and are subject to the contractual restrictions described below. Restricted shares may be sold in the public market only if registered or if they qualify for an exception from registration under Rules 144 or 701 promulgated under the Securities Act, which are summarized below. All of these restricted shares will be available for resale in the public market in reliance on Rule 144 immediately following this offering and will be subject to lock-up agreements described below.

Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 144 or 701 under the Securities Act, which rules are summarized below.

Sales of Restricted Shares and Shares Held by Our Affiliates

In general, under Rule 144 as currently in effect, an affiliate of the Company or a person, or persons whose shares are aggregated, who has beneficially owned restricted securities for at least one year, including the holding period of any prior owner except an affiliate of the Company, would be entitled to sell within any three month period a number of shares that does not exceed the greater of 1% of our then outstanding shares of common stock or the average weekly trading volume of our common stock on the NASDAQ National Market during the four calendar weeks preceding such sale. Sales under Rule 144 are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about the Company. Any person, or persons whose shares are aggregated, who is not deemed to have been an affiliate of the Company at any time during the 90 days preceding a sale, and who has beneficially owned shares for at least two years including any period of ownership of preceding non-affiliated holders, would be entitled to sell such shares under Rule 144(k) without regard to the volume limitations, manner of sale provisions, public information requirements or notice requirements.

Subject to certain limitations on the aggregate offering price of a transaction and other conditions, Rule 701 may be relied upon with respect to the resale of securities originally purchased from the Company by its employees, directors, officers, consultants or advisors prior to the date the issuer becomes subject to the reporting requirements of the Exchange Act. To be eligible for resale under Rule 701, shares must have been issued in connection with written compensatory benefit plans or written contracts relating to the compensation of such persons. In addition, the SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after the date of this offering. Securities issued in reliance on Rule 701 are restricted securities and, subject to the contractual restrictions described above, beginning 90 days after the date of this prospectus, may be sold by persons other than affiliates, subject only to the manner of sale provisions of Rule 144, and by affiliates, under Rule 144 without compliance with its one-year minimum holding period.

We have reserved an aggregate of 7,000,000 shares of common stock for issuance pursuant to our 2001 Equity Incentive Plan, of which options to purchase approximately 2,949,397 shares were outstanding as of December 31, 2003. We have also reserved an aggregate of 4,000,000 shares of common stock for issuance under our 2004 Equity Incentive Plan and shares of common stock for issuance under our 2004 Employee Stock Purchase Plan.

As soon as practicable following the offering, we intend to file registration statements under the Securities Act to register shares of common stock reserved for issuance under the 2004 Employee Stock Purchase Plan as well as pre-IPO shares qualified under Rule 701 that may be issued under the 2001 Equity Incentive Plan. Such registration statement will automatically become effective immediately upon filing. Any shares issued upon the exercise of stock options or following purchase under the 2004 Employee Stock Purchase Plan will be eligible for immediate public sale, subject to the lock-up agreements noted below. See "—2004 Employee Stock Purchase Plan" and "—2001 Equity Incentive Plan."

We have agreed not to sell or otherwise dispose of any shares of common stock during the 180-day period following the date of this prospectus, except we may issue, and grant options to purchase, shares of common stock under the 2004 Employee Stock Purchase Plan and the 2001 Equity Incentive Plan.

Lock-Up Agreements

Each of our executive officers, directors, stockholders and optionholders will have entered into lock-up agreements prior to the commencement of this offering providing, subject to exceptions, that they will not offer to sell, contract to sell or otherwise sell, dispose of, loan, pledge, or grant any rights with respect to any shares of common stock, any options or warrants to purchase, any of the shares of common stock or any securities convertible into, or exercisable or exchangeable for, common stock owned by them, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock, without the prior written consent of Banc of America Securities LLC, for a period of 180 days after the date of this prospectus.

The foregoing does not prohibit open market purchases and sales of our common stock by such holders after the completion of this offering and transfers or dispositions by our officers, directors and stockholders can be made sooner, provided that the transferee agrees to be bound by the 180-day lock-up period:

- as a gift or by will or intestacy;
- to immediate family members; and
- to any trust for the direct or indirect benefit of the holder or his or her immediate family.

Banc of America Securities LLC in its sole discretion and at any time without notice, may release all or any portion of the securities subject to lock-up agreements. When determining whether or not to release shares from the lock-up agreements, Banc of America Securities LLC will consider, among other factors, the stockholder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time. Following the expiration of the 180-day lock-up period, additional shares of common stock will be available for sale in the public market subject to compliance with Rule 144 or Rule 701.

Registration Rights

Upon completion of this offering, the holders of 33,848,484 shares of our common stock, or their transferees, have rights to require or participate in the registration of those shares under the Securities Act. For a detailed description of these registration rights see "Description of Capital Stock—Registration Rights."

MATERIAL UNITED STATES FEDERAL TAX CONSIDERATIONS FOR NON-UNITED STATES HOLDERS OF OUR COMMON STOCK

The following is a general discussion of the material U.S. federal income and estate tax considerations applicable to non-U.S. holders with respect to their ownership and disposition of shares of our common stock. This discussion is for general information only and is not tax advice. Accordingly, all prospective non-U.S. holders of our common stock should consult their own tax advisors with respect to the U.S. federal, state, local and non-U.S. tax consequences of the purchase, ownership and disposition of our common stock. In general, a non-U.S. holder means a beneficial owner of our common stock who is not for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the U.S.;
- a corporation, or any other organization taxable as a corporation for U.S. federal tax purposes, created or organized in the U.S. or under the laws of the U.S. or of any state thereof or the District of Columbia; or
- an estate or trust, the income of which is included in gross income for U.S. federal income tax purposes regardless of its source.

This discussion is based on current provisions of the U.S. Internal Revenue Code of 1986, as amended, existing and proposed U.S. Treasury Regulations promulgated thereunder, current administrative rulings and judicial decisions, in effect as of the date of this prospectus, all of which are subject to change or to differing interpretation, possibly with retroactive effect. Any change could alter the tax consequences to non-U.S. holders described in this prospectus. We assume in this discussion that a non-U.S. holder holds shares of our common stock as a capital asset (generally property held for investment).

This discussion does not address all aspects of U.S. federal income and estate taxation that may be relevant to a particular non-U.S. holder in light of that non-U.S. holder's individual circumstances nor does it address any aspects of U.S. state, local or non-U.S. taxes. This discussion also does not consider any specific facts or circumstances that may apply to a non-U.S. holder and does not address the special tax rules applicable to particular non-U.S. holders, such as:

- insurance companies;
- tax-exempt organizations;
- financial institutions;
- brokers or dealers in securities;
- partnerships or other pass-through entities;
- regulated investment companies;
- pension plans;
- owners (directly, indirectly or constructively) of more than 5% of our common stock;
- owners that hold our common stock as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment;
- owners that have a functional currency other than the U.S. dollar; and
- certain U.S. expatriates.

There can be no assurance that the Internal Revenue Service, referred to as the IRS, will not challenge one or more of the tax consequences described herein, and we have not obtained, nor do we intend to obtain, an opinion of counsel or IRS ruling with respect to the U.S. federal income or estate tax consequences to a non-U.S. holder of the purchase, ownership, or disposition of our common stock. **We urge prospective investors to consult with their own tax advisors regarding the U.S. federal, state, local and non-U.S. income and other tax considerations of acquiring, holding and disposing of shares of our common stock.**

Distributions on Our Common Stock

We have not declared or paid distributions on our common stock since our inception and do not intend to pay any distributions on our common stock in the foreseeable future. In the event we do pay distributions on our common stock, however, these distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such holder's tax basis in the common stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "Gain on Sale, Exchange or Other Disposition of Common Stock."

Dividends paid to a non-U.S. holder generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be provided by an applicable income tax treaty between the U.S. and such holder's country of residence. If we determine, at a time reasonably close to the date of payment of a distribution on our common stock, that the distribution will not constitute a dividend because we do not anticipate having current or accumulated earnings and profits, we intend not to withhold any U.S. federal income tax on the distribution as permitted by U.S. Treasury Regulations. If we or another withholding agent withholds tax on such a distribution, a non-U.S. holder may be entitled to a refund of the tax withheld which the non-U.S. holder may claim by filing a U.S. tax return with the IRS.

Dividends that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States (and if an applicable income tax treaty so provides, are also attributable to a permanent establishment or a fixed base maintained by such non-U.S. holder) are generally exempt from the 30% withholding tax if the non-U.S. holder satisfies applicable certification and disclosure requirements. However, such U.S. effectively connected income, net of specified deductions and credits, is taxed at the same graduated U.S. federal income tax rates applicable to U.S. persons. Any U.S. effectively connected income received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional branch profits tax at a 30% rate or such lower rate as specified by an applicable income tax treaty between the United States and such holder's country of residence.

A non-U.S. holder of our common stock who claims the benefit of an applicable income tax treaty between the United States and such holder's country of residence generally will be required to provide a properly executed IRS Form W-8BEN and satisfy applicable certification and other requirements. Non-U.S. holders are urged to consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

A non-U.S. holder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty may obtain a refund of any excess amounts withheld by timely filing an appropriate claim with the IRS.

Gain on Sale, Exchange or Other Disposition of Our Common Stock

In general, a non-U.S. holder will not be subject to any U.S. federal income tax or withholding tax on any gain realized upon such holder's sale, exchange or other disposition of shares of our common stock unless:

- the gain is effectively connected with a U.S. trade or business (and if an applicable income tax treaty so provides, is also attributable to a permanent establishment or a fixed base maintained by such non-U.S. holder), in which case the graduated U.S. federal income tax rates applicable to U.S. persons and, if the non-U.S. holder is a foreign corporation, the additional branch profits tax described above in "Distributions on Our Common Stock" may apply;
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax on the net gain derived from the disposition, which may be offset by U.S. source capital losses of the non-U.S. holder, if any; or

- we are or have been, at any time during the five-year period preceding such disposition (or the non-U.S. holder's holding period if shorter) a "U.S. real property holding corporation" unless our common stock is regularly traded on an established securities market and the non-U.S. holder holds no more than 5% of our outstanding common stock, directly, indirectly or constructively. If we are determined to be a U.S. real property holding corporation and the foregoing exception does not apply, then a purchaser may withhold 10% of the proceeds payable to a non-U.S. holder from a sale of our common stock and the non-U.S. holder generally will be taxed on its net gain derived from the disposition at the graduated U.S. federal income tax rates applicable to U.S. persons and, if the non-U.S. holder is a foreign corporation, the additional branch profits tax described above in "Distributions on Our Common Stock" may apply. Generally, a corporation is a U.S. real property holding corporation only if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance, we do not believe that we are, or have been, a U.S. real property holding corporation, or that we are likely to become one in the future. Furthermore, no assurance can be provided that our stock will be regularly traded on an established securities market for purposes of the rules described above.

U.S. Federal Estate Tax

Shares of our common stock that are owned or treated as owned by an individual non-U.S. holder at the time of death and certain lifetime transfers of an interest in our common stock made by such individual are considered U.S. situs assets and will be included in the individual's gross estate for U.S. federal estate tax purposes. Such shares, therefore, may be subject to U.S. federal estate tax, unless an applicable estate tax or other treaty provides otherwise.

Backup Withholding and Information Reporting

We must report annually to the IRS and to each non-U.S. holder the gross amount of the distributions on our common stock paid to such holder and the tax withheld, if any, with respect to such distributions. Non-U.S. holders may have to comply with specific certification procedures to establish that the holder is not a U.S. person in order to avoid backup withholding with respect to dividends on our common stock. The gross amount of dividends paid to a non-U.S. holder that fails to certify its non-U.S. holder's status in accordance with the applicable U.S. Treasury Regulations generally will be reduced by backup withholding at the applicable rate, currently 28%. Dividends paid to non-U.S. holders subject to the U.S. withholding tax, as described above in "Distributions on Our Common Stock," generally will be exempt from U.S. backup withholding.

Information reporting and backup withholding will generally apply to the proceeds of a disposition of our common stock by a non-U.S. holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a non-U.S. holder and satisfies certain other requirements, or otherwise establishes an exemption. Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds where the transaction is effected outside the U.S. through a non-U.S. office of a non-U.S. broker. However, for information reporting purposes, certain brokers with substantial U.S. ownership or operations generally will be treated in a manner similar to U.S. brokers. Non-U.S. holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Copies of information returns may be made available to the tax authorities of the country in which the non-U.S. holder resides or is incorporated under the provisions of a specific treaty or agreement.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that an appropriate claim is timely filed with the IRS.

UNDERWRITING

We are offering the shares of common stock described in this prospectus through a number of underwriters. Banc of America Securities LLC, CIBC World Markets Corp., Lazard Frères & Co. LLC and William Blair & Company, LLC are acting as representatives of the underwriters. We have entered into a firm commitment underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has agreed to purchase, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

Underwriter	Number of Shares
Banc of America Securities LLC	
CIBC World Markets Corp.	
Lazard Frères & Co. LLC	
William Blair & Company, LLC	
Total	

The underwriters initially will offer shares to the public at the price specified on the cover page of this prospectus. The underwriters may allow some dealers a concession of not more than $ per share. The underwriters also may allow, and any dealers may re-allow, a concession of not more than $ per share to some other dealers. If all the shares are not sold at the initial public offering price, the underwriters may change the offering price and other selling terms. The common stock is offered subject to a number of conditions, including:

- receipt and acceptance of our common stock by the underwriters, and
- the right to reject orders in whole or in part.

The underwriters have an option to buy up to additional shares of common stock from us to cover sales of shares by the underwriters which exceed the number of shares specified in the table above at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus. The underwriters have 30 days from the date of this prospectus to exercise this option. If the underwriters exercise this option, they will each be obligated, subject to certain conditions, to purchase additional shares approximately in proportion to the amounts specified in the table above. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered. We will pay the expenses associated with the exercise of the over-allotment option.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is % of the initial public offering price. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Paid by Threshold	
	No Exercise	Full Exercise
Per Share	$	$
Total	$	$

In addition, we estimate that our share of the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately $.

We and our directors, executive officers, all of our existing stockholders and all of our optionholders will have entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant

to which we and such holders of stock and options have agreed, with limited exceptions, not to sell, directly or indirectly, any shares of our common stock without the prior written consent of Banc of America Securities LLC and CIBC World Markets Corp. for a period of 180 days after the date of this prospectus. This consent may be given at any time without public notice. We have entered into a similar agreement with the representatives of the underwriters, except that we may grant options and sell shares pursuant to our stock plans without such consent. There are no agreements between the representatives and any of our stockholders or affiliates releasing them from these lock-up agreements prior to the expiration of the 180-day period.

We have applied to list our common stock on the NASDAQ National Market under the symbol "THLD." The underwriters have undertaken to sell and distribute our common stock in compliance with the standards of the NASDAQ National Market.

We will indemnify the underwriters against some specified types of liabilities, including liabilities under the Securities Act of 1933. If we are unable to provide this indemnification, we will contribute to payments the underwriters may be required to make in respect of those liabilities.

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling shares of common stock in the open market for the purpose of preventing or retarding a decline in the market price of the common stock while this offering is in progress.

These stabilizing transactions may include making short sales of the common stock, which involves the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering, and purchasing shares of common stock on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked" shorts, which are short positions in excess of that amount.

The underwriters may close out any covered short position either by exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the over-allotment option.

A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters may also engage in other activities that stabilize, maintain or otherwise affect the price of the common stock, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock, and, as a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on The NASDAQ National Market, in the over-the-counter market or otherwise.

The underwriters do not expect sales to discretionary accounts to exceed % of the total number of shares of common stock offered by this prospectus.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiation between us and the representatives of the underwriters. Among the factors considered in these negotiations are:

- the history of, and prospects for, our company and the industry in which we compete,
- the past and present financial performance of our company,
- an assessment of our management,
- the present state of our development,
- the prospects for our future earnings,
- the prevailing market conditions of the applicable United States securities market at the time of this offering, market valuations of publicly traded companies that we and the representatives of the underwriters believe to be comparable to our company, and
- other factors deemed relevant.

The estimated initial public offering price range set forth on the cover of this preliminary prospectus is subject to change as a result of market conditions and other factors.

LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Heller Ehrman White & McAuliffe LLP, Menlo Park, CA. Shearman & Sterling LLP, New York, NY is counsel for the underwriters in connection with this offering.

EXPERTS

The financial statements of Threshold Pharmaceuticals, Inc. as of December 31, 2002 and 2003 and for the period from October 17, 2001 (date of inception) to December 31, 2001, for each of the two years in the period ended December 31, 2003 and for the period from October 17, 2001 (date of inception) to December 31, 2003 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act of 1933 with respect to the shares of common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits, schedules and amendments to the registration statement. For further information with respect to us and the shares of common stock to be sold in this offering, reference is made to the registration statement. Statements contained in this prospectus as to the contents of any contract, agreement, or other document to which we make reference are not necessarily complete. In each instance, if we have filed a copy of such contract, agreement, or other document as an exhibit to the registration statement, you should read the exhibit for a more complete understanding of the matter involved. Each statement regarding a contract, agreement or other document is qualified in all respects by reference to the actual document.

Upon completion of this offering, we will become subject to the reporting and information requirements of the Securities Exchange Act of 1934 and, as a result, will file periodic and current reports, proxy statements, and other information with the SEC. You may read and copy this information at the Public Reference Room of the SEC located at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. Copies of all or any part of the registration statement may be obtained from the SEC's offices upon payment of fees prescribed by the SEC. The SEC maintains an Internet site that contains periodic and current reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of the SEC's website is *http://www.sec.gov*.

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(A DEVELOPMENT STAGE ENTERPRISE)
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REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Stockholders of
Threshold Pharmaceuticals, Inc.

In our opinion, the accompanying balance sheets and the related statements of operations, of stockholders' deficit and of cash flows present fairly, in all material respects, the financial position of Threshold Pharmaceuticals, Inc. (a development stage enterprise) at December 31, 2002 and 2003, and the results of its operations and its cash flows for the period from October 17, 2001 (date of inception) to December 31, 2001, for the years ended December 31, 2002 and 2003 and, cumulatively, for the period from October 17, 2001 (date of inception) to December 31, 2003, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

San Jose, California
April 8, 2004

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
BALANCE SHEETS
(in thousands, except share and per share data)

	December 31,		Pro forma Stockholders' Equity at December 31, 2003 (see Note 2)
	2002	2003	
			(unaudited)
ASSETS			
Current assets:			
Cash and cash equivalents	$ 6,215	$ 40,609	
Marketable securities	45	209	
Prepaid expenses and other current assets	280	128	
Restricted cash	30	115	
Total current assets	6,570	41,061	
Property and equipment, net	71	199	
Restricted cash	85	—	
Other assets	—	10	
Total assets	$ 6,726	$ 41,270	
LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)			
Current liabilities:			
Accounts payable	$ 313	$ 281	
Accrued liabilities	103	437	
Notes payable	—	166	
Total current liabilities	416	884	
Notes payable, less current portion	—	242	
Total liabilities	416	1,126	
Commitments and contingencies (Note 7)			
Redeemable convertible preferred stock, $0.001 par value:			
Authorized: 33,886,484 shares			
Issued and outstanding: 9,000,000 shares in 2002, 33,848,484 shares in 2003 and none pro forma (unaudited)			
(Liquidation value: $49,999,999 at December 31, 2003)	8,977	49,839	$ —
Stockholders' equity (deficit):			
Common stock, $0.001 par value:			
Authorized: 50,000,000 shares			
Issued and outstanding: 291,500 shares in 2002, 304,202 shares in 2003 and 34,152,686 shares pro forma (unaudited)	—	—	34
Additional paid-in-capital	52	2,685	52,490
Deferred stock-based compensation	(24)	(1,546)	(1,546)
Accumulated other comprehensive income (loss)	(1)	163	163
Deficit accumulated during the development stage	(2,694)	(10,997)	(10,997)
Total stockholders' equity (deficit)	(2,667)	(9,695)	$ 40,144
Total liabilities and stockholders' deficit	$ 6,726	$ 41,270	

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

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Period from October 17, 2001 (date of inception) to December 31, 2001	Years Ended December 31, 2002	Years Ended December 31, 2003	Cumulative Period from October 17, 2001 (date of inception) to December 31, 2003
Operating expenses:				
Research and development	$ 35	$ 2,179	$ 6,252	$ 8,466
General and administrative	201	306	2,057	2,564
Total operating expenses	236	2,485	8,309	11,030
Loss from operations	(236)	(2,485)	(8,309)	(11,030)
Interest income	—	27	65	92
Interest expense	—	—	(59)	(59)
Net loss	(236)	(2,458)	(8,303)	(10,997)
Dividend related to beneficial conversion feature of redeemable convertible preferred stock	—	—	(40,862)	(40,862)
Net loss attributable to common stockholders	$ (236)	$ (2,458)	$ (49,165)	$ (51,859)
Net loss per common share:				
Basic and diluted	$ (1.29)	$ (21.19)	$ (305.37)	
Weighted average number of shares used in per common share calculations:				
Basic and diluted	183	116	161	
Pro forma net loss per common share (unaudited)(see Note 13):				
Basic and diluted			$ (4.04)	
Weighted-average number of shares used in pro forma per common share calculations (unaudited)(see Note 13):				
Basic and diluted			12,156	

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

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
STATEMENTS OF STOCKHOLDERS' DEFICIT
FOR THE PERIOD
FROM OCTOBER 17, 2001 (DATE OF INCEPTION) TO DECEMBER 31, 2003
(in thousands, except share and per share data)

	Common Stock		Additional Paid-In Capital	Deferred Stock-Based Compensation	Accumulated Other Comprehensive Income (Loss)	Deficit Accumulated During the Development Stage	Total Stockholders' Deficit
	Shares	Amount					
Issuance of restricted common stock to a founder and member of the Board of Directors in October 2001 for cash at $0.01 per share	250,000	$ —	$ 2	$ —	$ —	$ —	$ 2
Net loss	—	—	—	—	—	(236)	(236)
Balances, December 31, 2001	250,000	—	2	—	—	(236)	(234)
Issuance of restricted common stock to a member of the Board of Directors for cash at $0.10 per share in January 2002	37,500	—	4	—	—	—	4
Issuance of common stock pursuant to exercise of stock options for cash at $0.10 per share	4,000	—	—	—	—	—	—
Deferred stock-based compensation	—	—	25	(25)	—	—	—
Amortization of deferred stock-based compensation	—	—	—	1	—	—	1
Non-employee stock-based compensation	—	—	21	—	—	—	21
Components of other comprehensive income (loss):							
Unrealized loss on marketable securities	—	—	—	—	(1)	—	(1)
Net loss	—	—	—	—	—	(2,458)	(2,458)
Comprehensive loss							(2,459)
Balances, December 31, 2002	291,500	—	52	(24)	(1)	(2,694)	(2,667)
Issuance of common stock pursuant to exercise of stock options for cash at $0.10 per share	12,702	—	1	—	—	—	1
Issuance of a warrant to purchase Series A redeemable convertible preferred stock	—	—	44	—	—	—	44
Beneficial conversion feature related to issuance of Series B redeemable convertible preferred stock	—	—	40,862	—	—	—	40,862
Deemed dividend related to beneficial conversion feature of Series B redeemable convertible preferred stock	—	—	(40,862)	—	—	—	(40,862)
Deferred stock-based compensation, net of cancellations	—	—	2,332	(2,332)	—	—	—
Amortization of deferred stock-based compensation	—	—	—	810	—	—	810
Non-employee stock-based compensation	—	—	256	—	—	—	256
Components of other comprehensive income (loss):							
Change in unrealized gain (loss) on marketable securities	—	—	—	—	164	—	164
Net loss	—	—	—	—	—	(8,303)	(8,303)
Comprehensive loss							(8,139)
Balances, December 31, 2003	304,202	$ —	$ 2,685	$ (1,546)	$ 163	$ (10,997)	$ (9,695)

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

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
STATEMENTS OF CASH FLOWS
(in thousands)

	Period from October 17, 2001 (date of inception) to December 31, 2001	Years Ended December 31, 2002	Years Ended December 31, 2003	Cumulative Period from October 17, 2001 (date of inception) to December 31, 2003
Cash flows from operating activities:				
Net loss	$ (236)	$ (2,458)	$ (8,303)	$ (10,997)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation	—	11	90	101
Stock-based compensation expense	—	22	1,066	1,088
Amortization of debt issuance costs	—	—	34	34
Loss on disposal of property and equipment	—	5	—	5
Changes in operating assets and liabilities:				
Prepaids and other current assets	(8)	(272)	152	(128)
Accounts payable	51	262	(32)	281
Accrued liabilities	142	(39)	334	437
Net cash used in operating activities	(51)	(2,469)	(6,659)	(9,179)
Cash flows from investing activities:				
Acquisition of property and equipment	—	(87)	(218)	(305)
Acquisition of marketable securities	—	(46)	—	(46)
Restricted cash	—	(115)	—	(115)
Net cash used in investing activities	—	(248)	(218)	(466)
Cash flows from financing activities:				
Proceeds from redeemable convertible preferred stock, net	236	8,741	40,862	49,839
Proceeds from common stock	2	4	1	7
Proceeds from issuance of notes payable	—	—	510	510
Repayment of notes payable	—	—	(102)	(102)
Net cash provided by financing activities	238	8,745	41,271	50,254
Net increase in cash and cash equivalents	187	6,028	34,394	40,609
Cash and cash equivalents, beginning of period	—	187	6,215	—
Cash and cash equivalents, end of period	$ 187	$ 6,215	$ 40,609	$ 40,609
Supplemental disclosures:				
Cash paid for interest	$ —	$ —	$ 14	$ 14
Non-cash financing activities:				
Deferred stock-based compensation	$ —	$ 25	$ 2,332	$ 2,357
Fair value of redeemable convertible preferred stock warrant	$ —	$ —	$ 44	$ 44
Dividend related to beneficial conversion feature of redeemable convertible preferred stock	$ —	$ —	$ 40,862	$ 40,862

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

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
NOTES TO FINANCIAL STATEMENTS

NOTE 1—THE COMPANY:

Threshold Pharmaceuticals, Inc. (the "Company") was incorporated in the State of Delaware on October 17, 2001. The Company is a biotechnology company engaged primarily in the research, development and commercialization of targeted small molecule therapies initially for the treatment of cancer and benign prostatic hyperplasia. The Company is in the development stage and since inception, has devoted substantially all of its time and efforts to performing research and development, raising capital and recruiting personnel.

NOTE 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Cash and cash equivalents

The Company considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. All cash and cash equivalents are held in the United States of America in financial institutions and money market funds, which are unrestricted as to withdrawal or use.

Restricted cash

Restricted cash represents two certificates of deposit held at a financial institution. The certificates serve as collateral for the Company's facility lease and credit facility agreements.

Marketable securities

The Company classifies its marketable securities as "available-for-sale." Such marketable securities are recorded at fair value and unrealized gains and losses are recorded as a separate component of stockholders' deficit until realized. Realized gains and losses on sale of all such securities will be reported in net loss, computed using the specific identification cost method. The Company has not realized any gains or losses from the sale of marketable securities through December 31, 2003.

Fair value of financial instruments

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts payable and accrued liabilities approximate fair value due to their relatively short maturities. Based on borrowing rates currently available to the Company for loans with similar terms, the carrying value of the notes payable at December 31, 2003 approximates fair value. Estimated fair values for marketable securities, which are separately disclosed elsewhere, are based on quoted market prices for the same or similar instruments.

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
NOTES TO FINANCIAL STATEMENTS
(Continued)

Concentration of credit risk and other risks and uncertainties

Financial instruments which potentially subject the Company to concentrations of risk consist principally of cash and cash equivalents. The Company's cash and cash equivalents are invested in deposits with one major bank in the United States of America that management believes is creditworthy. The Company is exposed to credit risk in the event of default by the financial institution for amounts in excess of Federal Deposit Insurance Corporation insured limits. The Company performs periodic evaluations of the relative credit standings of these financial institutions and limits the amount of credit exposure with any institution.

Any products developed by the Company will require approval from the U.S. Food and Drug Administration ("FDA") or foreign regulatory agencies prior to commercial sales. There can be no assurance that the Company's products will receive the necessary approvals. If the Company is denied such approvals or such approvals are delayed, it could have a material adverse effect on the Company.

The Company is currently developing its first product offering and has no products that have received regulatory approval. To achieve profitable operations, the Company must successfully develop, test, manufacture and market its products. There can be no assurance that any such products can be developed successfully or manufactured at an acceptable cost and with appropriate performance characteristics, or that such products will be successfully marketed. These factors could have a material adverse effect on the Company's future financial results.

Property and equipment

Property and equipment is stated at cost less accumulated depreciation. Depreciation is computed on a straight-line basis over the estimated useful lives of the related assets, generally three years. Maintenance and repairs are charged to operations as incurred. Upon sale or retirement of assets, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operations.

Impairment of long-lived assets

In accordance with the provisions of Statement of Financial Accounting Standards Board ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets," the Company reviews long-lived assets, including property and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. Under SFAS No. 144, an impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. Impairment, if any, is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value. The Company considers various valuation factors, principally discounted cash flows, to assess the fair values of long-lived assets. As of December 31, 2003, the Company has not incurred such impairment losses.

Comprehensive income (loss)

Comprehensive income (loss) generally represents all changes in stockholders' deficit except those resulting from investments or contributions by stockholders. The Company's unrealized gain (loss) on available-for-sale marketable securities represents the only component of other comprehensive loss that is excluded from the Company's net loss and has been reflected in the statement of stockholders' deficit.

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Unaudited pro forma stockholders' equity

If the offering contemplated by this prospectus is consummated, all of the redeemable convertible preferred stock outstanding will automatically convert into 33,848,484 shares of common stock based on the shares of redeemable convertible preferred stock outstanding at December 31, 2003. Unaudited pro forma stockholders' equity, as adjusted for the assumed conversion of the redeemable convertible preferred stock, is set forth on the balance sheet.

Research and development expenditures

Research and development costs are charged to research and development expense as incurred. Cost accruals for preclinical studies are based upon estimates of work completed under service agreements, milestones achieved and services performed. The Company's estimates of work completed and associated cost accruals include its assessments of information received from third-party contract research organizations and the overall status of preclinical trial activities.

Advertising costs

Advertising costs will be expensed as incurred. The Company has not incurred any advertising costs since its inception.

Income taxes

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Segments

The Company operates in one segment, using one measurement of profitability to manage its business. All long-lived assets are maintained in the United States of America.

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Net loss per common share

Basic net loss per common share is computed by dividing net loss attributable to common stockholders by the weighted average number of vested common shares outstanding during the period. Diluted net loss per common share is computed by giving effect to all potential dilutive common shares, including options, common stock subject to repurchase, warrants and redeemable convertible preferred stock. A reconciliation of the numerator and denominator used in the calculation of basic and diluted net loss per common share follows (in thousands):

	Period from October 17, 2001 (date of inception) to December 31, 2001	Years Ended December 31, 2002	Years Ended December 31, 2003
Numerator:			
Net loss	$ (236)	$ (2,458)	$ (8,303)
Dividend related to beneficial conversion feature of redeemable convertible preferred stock	—	—	(40,862)
Net loss attributable to common stockholders	$ (236)	$ (2,458)	$ (49,165)
Denominator:			
Weighted-average number of common shares outstanding	224	286	301
Less: Weighted-average shares subject to repurchase	(41)	(170)	(140)
Weighted-average number of common shares outstanding used in computing basic and diluted net loss per common share	183	116	161

The following outstanding options, common stock subject to repurchase, redeemable convertible preferred stock and warrants were excluded from the computation of diluted net loss per common share for the periods presented because including them would have had an antidilutive effect (in thousands):

	December 31, 2001	December 31, 2002	December 31, 2003
Redeemable convertible preferred stock	250	9,000	33,848
Options to purchase common stock	—	1,775	2,949
Common stock subject to repurchase	162	157	125
Warrants to purchase redeemable convertible preferred stock	—	—	38

Stock-based compensation

The Company uses the intrinsic value method of Accounting Principles Board Opinion No. 25 “Accounting for Stock Issued to Employees,” (“APB No. 25”) in accounting for its employee stock options, and presents disclosure of pro forma information required under SFAS No. 123, “Accounting for Stock-Based Compensation (“SFAS No. 123”), as amended by SFAS No. 148, “Accounting for Stock-Based Compensation—Transition and Disclosure—an amendment of FASB Statement No. 123” (“SFAS No. 148”).

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If compensation expense had been determined based upon the fair value at the grant date for employee compensation arrangements, consistent with the methodology prescribed under SFAS No. 123, the Company's pro forma net loss attributable to common stockholders and pro forma net loss per common share attributable to common stockholders under SFAS No. 123 would have been as follows (in thousands, except per share data):

	Period from October 17, 2001 (date of inception) to December 31, 2001	Years Ended December 31, 2002	Years Ended December 31, 2003
Net loss attributable to common stockholders, as reported	$ (236)	$(2,458)	$(49,165)
Add: Employee stock-based compensation included in reported net loss	—	1	810
Deduct: Employee total stock-based compensation determined under fair value method	—	(13)	(815)
Pro forma net loss attributable to common stockholders	$ (236)	$(2,470)	$(49,170)
Net loss attributable to common stockholders per common share, basic and diluted:			
As reported	$ (1.29)	$(21.19)	$(305.37)
Pro forma	$ (1.29)	$(21.29)	$(305.40)

Differences may not be representative of future compensation costs because options vest over several years and additional grants are made each year.

In accordance with the provisions of SFAS No. 123, the fair value of each option is estimated using the minimum value method based on the following assumptions:

	Years Ended December 31, 2002	Years Ended December 31, 2003
Weighted average risk-free interest rate	2.98%	1.98%
Expected life (in years)	4	4
Dividend yield	—	—

The grant date weighted average fair value per share of options granted during the years ended December 31, 2002 and 2003 was $0.03 and $2.11, respectively. The Company did not grant any options to purchase common stock during the period from October 17, 2001 (date of inception) to December 31, 2001.

The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123 and Emerging Issues Task Force ("EITF") Issue No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services" which require that such equity instruments are recorded at their fair value on the measurement date. The measurement of stock-based compensation is subject to periodic adjustment as the underlying equity instruments vest.

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Recent accounting pronouncements

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" ("SFAS No. 150"). SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. SFAS No. 150 requires that an issuer classify those financial instruments as liabilities (or assets in some circumstances). Under previous guidance, issuers could account for those financial instruments as equity. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. In November 2003, certain elements of SFAS No. 150 were deferred to fiscal periods beginning after December 15, 2004. SFAS No. 150 is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of SFAS No. 150 and still existing at the beginning of the interim period of adoption. Restatement is not permitted. The adoption of the effective elements of SFAS No. 150 had no material effect on the Company's financial position or results of operations. The Company does not expect the adoption of the deferred elements of SFAS No. 150 to have a material effect on its financial position or results of operations.

In December 2003, the FASB issued a revised FASB Interpretation No. 46 ("FIN No. 46R"), "Consolidation of Variable Interest Entities, an interpretation of ARB No. 51." The FASB published the revision to clarify and amend some of the original provisions of FIN No. 46, which was issued in January 2003, and to exempt certain entities from its requirements. A variable interest entity ("VIE") refers to an entity subject to consolidation according to the provisions of this Interpretation. FIN No. 46R applies to entities whose equity investment at risk is insufficient to finance that entity's activities without receiving additional subordinated financial support provided by any parties, including equity holders, or where the equity investors (if any) do not have a controlling financial interest. FIN No. 46R provides that if an entity is the primary beneficiary of a VIE, the assets, liabilities, and results of operations of the VIE should be consolidated in the entity's financial statements. In addition, FIN No. 46R requires that both the primary beneficiary and all other enterprises with a significant variable interest in a VIE provide additional disclosures. The provisions of FIN No. 46R will be effective in the first quarter of fiscal 2004. The Company does not expect the adoption of FIN No. 46R to have a material effect on its financial position or results of operations.

NOTE 3—MARKETABLE SECURITIES:

As of December 31, 2002 (in thousands):	Cost Basis	Unrealized Gain	Unrealized Loss	Fair Value
Common stock in a public company	$ 46	$ —	$ (1)	$ 45

As of December 31, 2003 (in thousands):	Cost Basis	Unrealized Gain	Unrealized Loss	Fair Value
Common stock in a public company	$ 46	$ 163	$ —	$ 209

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NOTE 4—PROPERTY AND EQUIPMENT:

Property and equipment comprise the following (in thousands):

	December 31,	
	2002	2003
Laboratory equipment	$ 52	$ 270
Computer equipment	30	30
	82	300
Less: Accumulated depreciation	(11)	(101)
	$ 71	$ 199

NOTE 5—ACCRUED LIABILITIES:

Accrued liabilities comprise the following (in thousands):

	December 31,	
	2002	2003
Professional services fees	$ 50	$ 125
Payroll and employee related expenses	12	77
Clinical expenses	7	217
Other accrued expenses	34	18
	$ 103	$ 437

NOTE 6—NOTES PAYABLE:

On March 27, 2003, the Company entered into a line of credit agreement, as amended, with a financial institution under which the Company can borrow up to $1,000,000 for working capital requirements and equipment purchases through March 31, 2005. Each borrowing under the line of credit accrues interest at the greater of the treasury note rate plus 3.0% or a fixed rate of 5.5% per annum at the date of borrowing and is repayable in 36 monthly installments. As of December 31, 2003, the Company had borrowed $300,000 under its working capital line of credit and $210,000 under the equipment line of credit, for borrowings of approximately $510,000 at an interest rate of 5.5% per annum. Borrowings under the equipment line of credit are collateralized by the related equipment. In connection with the agreement, the Company issued a warrant to purchase 38,000 shares of Series A redeemable convertible preferred stock to the financial institution (see Note 8).

At December 31, 2003, future principal payments under the notes payable are as follows (in thousands):

Year Ending December 31,	
2004	$ 166
2005	175
2006	67
Total	$ 408

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Under the line of credit agreement, the Company is required to maintain the lower of 85% of its total cash and cash equivalents or $10,000,000 with the financial institution. At December 31, 2003, the Company was in compliance with this and all other covenants in the agreement.

NOTE 7—COMMITMENTS AND CONTINGENCIES:

On December 18, 2002, the Company entered into a noncancelable facility operating lease which expires on December 31, 2004. At December 31, 2003, future minimum payments under the lease were $473,000. In conjunction with the facility lease, the Company issued a standby letter of credit collateralized by a certificate of deposit in lieu of a security deposit for $85,000. The certificate of deposit is classified as restricted cash (see Note 2).

Rent expense for the period from October 17, 2001 (date of inception) to December 31, 2001, for the years ended December 31, 2002 and 2003 and, cumulatively, for the period from October 17, 2001 (date of inception) to December 31, 2003 was $26,000, $112,000, $447,000 and $585,000, respectively.

License agreements

In November 2002, the Company entered into an exclusive license agreement with certain individuals for rights to certain patent applications. Under the terms of the agreement, the Company was required to make aggregate upfront payments of approximately $15,000. Based on the early stage of development and the uncertainty of the feasibility of the licensed technology, the upfront fees were expensed immediately as incurred. The Company is also required to make various milestone payments up to $700,000 in connection with regulatory filings and approvals and additional royalty payments upon product commercialization. No milestone or royalty payments have been made as of December 31, 2003.

In August 2003, the Company entered into an exclusive worldwide license and development agreement with a corporation for certain patent rights and technology. Under the terms of the agreement, the Company made an initial upfront payment of $100,000 and will be required to make milestone payments to the corporation in connection with the initiation of a Phase 3 clinical trial using the above licensed technology. Total milestone payments in connection with the development of glufosfamide and United States of America and foreign regulatory submissions and approvals could equal $9,400,000. In addition, based on the attainment of specified sales thresholds the Company could be required to make payments totaling $17,500,000. As of December 31, 2003, the Company has paid a milestone payment of $100,000. The Company will also be required to make royalty payments upon product commercialization. No royalty payments have been made as of December 31, 2003.

Indemnification

The Company enters into standard indemnification arrangements in the ordinary course of business. Pursuant to these arrangements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified parties for losses suffered or incurred by the indemnified party, generally the Company's business partners, in connection with any trade secret, copyright, patent or other intellectual property infringement claim by any third party with respect to its products. The terms of these indemnification agreements are generally perpetual. The maximum potential amount of future payments the Company could be required to make under these agreements is not determinable. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the estimated fair value of these agreements is minimal.

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The Company's bylaws provide that it is required to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers, other than liabilities arising from willful misconduct of a culpable nature to the fullest extent permissible by applicable law; and to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified. As of December 31, 2003, the Company did not have directors' and officers' insurance.

NOTE 8—REDEEMABLE CONVERTIBLE PREFERRED STOCK:

Under the Company's Certificate of Incorporation, as amended, the Company is authorized to issue preferred stock in series. The Company's Board of Directors is authorized to determine the rights, preferences and terms of each series.

As of December 31, 2001, the redeemable convertible preferred stock comprises:

	Number of Shares Authorized	Number of Shares Issued and Outstanding	Carrying Value	Liquidation Value per Share
Series A	9,500,000	250,000	$ 236,000	$ 1.00

As of December 31, 2002, the redeemable convertible preferred stock comprises:

	Number of Shares Authorized	Number of Shares Issued and Outstanding	Carrying Value	Liquidation Value per Share
Series A	9,500,000	9,000,000	$ 8,977,000	$ 1.00

As of December 31, 2003, the redeemable convertible preferred stock comprises:

	Number of Shares Authorized	Number of Shares Issued and Outstanding	Carrying Value	Liquidation Value per Share
Series A	9,038,000	9,000,000	$ 8,977,000	$ 1.00
Series B	24,848,484	24,848,484	40,862,000	$ 1.65
	33,886,484	33,848,484	$ 49,839,000	

As of December 31, 2003, the rights, preferences, privileges and restrictions of Series A and B redeemable convertible preferred stock are:

Dividends

The holders of the Series B redeemable convertible preferred stock are entitled to receive noncumulative annual dividends at the rate of $0.132 per share when, as and if declared by the Board of Directors. Dividends on Series B redeemable convertible preferred stock shall be payable in preference to and prior to payment of dividends on Series A redeemable convertible preferred stock and common stock. If Series B redeemable convertible preferred stock have been paid in full or declared and set apart, the holders of the Series A

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redeemable convertible preferred stock are entitled to receive noncumulative annual dividends at the rate of $0.08 per share when, as and if declared by the Board of Directors. Dividends on Series A redeemable convertible preferred stock shall be payable in preference to and prior to payment of dividends on common stock. In the event that dividends are paid on common stock, dividends shall be paid on redeemable convertible preferred stock in an amount equal per share (on an as-if-converted basis) to the amount paid for each share of common stock. As of December 31, 2003, no dividends had been declared on any class of the Company's capital stock.

Liquidation

A merger, consolidation or sale of all or substantially all of the assets of the Company which will result in the Company's stockholders immediately prior to such transaction holding less than 50% of the voting power of the surviving, continuing or purchasing entity will be deemed to be a liquidation, dissolution or winding up of the Company.

In the event of any liquidation or winding up of the Company, the holders of the Company's Series B redeemable convertible preferred stock are entitled to receive, prior to any distribution of the Company's assets to and in preference to any distribution to holders of Series A redeemable convertible preferred stock and common stock, an amount equal to $1.65 per share for each outstanding share of Series B redeemable convertible preferred stock, plus any declared but unpaid dividends. If the Company's assets are insufficient to provide for such preferential distributions, the holders of Series B redeemable convertible preferred stock will receive all of the Company's remaining assets on a pro rata basis.

After distributions have been made to the holders of Series B redeemable convertible preferred stock, the holders of the Company's Series A redeemable convertible preferred stock will be entitled to receive, prior to any distribution of the Company's assets to and in preference to any distribution to holders of the common stock, an amount equal to $1.00 per share for each outstanding share of Series A redeemable convertible preferred stock, plus any declared but unpaid dividends. If the Company's assets are insufficient to provide for such preferential distributions, the holders of Series A redeemable convertible preferred stock will receive all of the Company's remaining assets on a pro rata basis.

Following full payment to the holders of Series A and B redeemable convertible preferred stock, the holders of common stock will be entitled to the remaining assets, if any, on a pro rata basis.

Redemption

The merger or consolidation of the Company into another entity or any transactions in which more than 50% of the voting power of the Company is disposed of or the sale, transfer or disposition of substantially all of the property or business of the Company is deemed a liquidation, dissolution, or winding up of the Company. These liquidation characteristics require classification of the redeemable convertible preferred stock outside of the stockholders' deficit section as these factors are outside the control of the Company. The redeemable convertible preferred stock is not redeemable in any other circumstances.

Conversion

Each share of redeemable convertible preferred stock, at the option of the holder, is convertible into the number of fully paid and nonassessable shares of common stock (adjusted to reflect stock dividends, stock splits

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and recapitalization) that results from dividing the original issue price by the conversion price in effect at the time of the conversion. The initial per share conversion price of the Series A and B redeemable convertible preferred stock is $1.00 and $1.65 per share, respectively.

Conversion of the convertible preferred stock is automatic and will be converted at the then applicable prices upon the earlier of any of the following events: (i) affirmative election of the holders of at least 75% of the then outstanding shares of the redeemable convertible preferred stock, or (ii) the closing of a firm commitment underwritten public offering based on an effective registration statement under the Securities Act of 1933 for the issuance of common stock. The aggregate proceeds raised from the offering must exceed $50,000,000 prior to the underwriters' commission and other offering costs, and with a pre-money valuation not less than $200,000,000.

Voting rights

The holder of each share of the Company's redeemable convertible preferred stock has the right to one vote for each share of common stock into which such redeemable convertible preferred stock could be converted.

As long as at least 6,000,000 shares of Series B redeemable convertible preferred stock remain outstanding, the Company must obtain approval from at least 60% of the then outstanding shares of Series B redeemable convertible preferred stock in order to amend the Certificate of Incorporation or Bylaws as related to Series B redeemable convertible preferred stock, or change or reclassify any shares of redeemable convertible preferred stock that adversely effects the rights, preferences or privileges relating to Series B redeemable convertible preferred stock.

As long as at least 4,000,000 shares of Series A redeemable convertible preferred stock remain outstanding, the Company must obtain approval from a majority of the then outstanding shares of Series A redeemable convertible preferred stock in order to amend the Certificate of Incorporation or Bylaws as related to Series A redeemable convertible preferred stock, or change or reclassify any shares that adversely effects the rights, preferences or privileges relating to Series A redeemable convertible preferred stock.

As long as at least 8,462,121 shares of Series A and Series B redeemable convertible preferred stock remain outstanding, the Company must obtain approval from at least 75% of the then outstanding Series A and Series B redeemable convertible preferred shares in order to change the authorized number of shares of common stock or redeemable convertible preferred stock, take actions that result in certain redemption or repurchase of any shares of common stock, result in a consolidation, merger or asset sale, declare or pay dividends, enter into a consolidation or sale of substantially all of its assets, or issue debt in excess of $500,000.

Sale of Series B redeemable convertible preferred securities

In November 2003, the Company sold an aggregate of 24,848,484 shares of Series B redeemable convertible preferred stock for net proceeds of approximately $40,862,000. The issuance of Series B redeemable convertible preferred stock resulted in a beneficial conversion feature, calculated in accordance with EITF No. 00-27, "Application of Issue No. 98-5, "Accounting for Convertible Securities with Beneficial Conversion Features of Contingently Adjustable Conversion Ratios" to Certain Convertible Instruments" based upon the conversion price of the preferred stock into common, and the fair value of the common stock at the date of issue. Accordingly, the Company has recognized approximately $40,862,000 as a charge to additional paid-in-capital to account for the deemed dividend on the redeemable convertible preferred stock as of the issuance date in the year ended December 31, 2003. In accordance with the provisions of EITF No. 00-27, the amount of the deemed

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dividend related to the beneficial conversion feature is limited to the net proceeds received by the Company for the sale of the related securities.

Warrant

In connection with the line of credit agreement in March 2003, the Company issued a warrant to purchase an aggregate of 38,000 shares of Series A redeemable convertible preferred stock at an exercise price of $1.00 per share. The warrant was fully vested and exercisable upon grant, and will expire in March 2013 or seven years after the closing date of the Company's initial public offering, whichever is later. At the date of issuance, the aggregate fair value of the warrant was deemed to be $44,000, which was determined using the Black-Scholes valuation model with the following assumptions: term of 10 years, risk free rate of 4.33%, volatility of 70% and a dividend yield of zero. The fair value of the warrant has been reflected as an other asset and is being amortized to interest expense on a straight-line basis over the term of the line of credit.

NOTE 9—STOCKHOLDERS' DEFICIT:

Common stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends whenever funds are legally available and when declared by the Board of Directors, subject to the prior rights of holders of all classes of stock outstanding having priority rights as to dividends. No dividends have been declared or paid as of December 31, 2003.

On October 24, 2001, shares of restricted stock were issued to the Company's founder and member of the Board of Directors under a restricted stock purchase agreement. On January 29, 2002, shares of restricted common stock were issued to a member of the Board of Directors under a restricted stock purchase agreement. Generally, the shares vest over a four-year period. The unvested shares of common stock are subject to repurchase by the Company in the event of termination of the employment or consulting relationship. Included in common stock as of December 31, 2002 and 2003 are 157,061 and 125,116 shares subject to the Company's right of repurchase, respectively.

2001 Equity Incentive Plan

In December 2001, as amended in November 2003, the Board of Directors authorized the 2001 Stock Plan (the "2001 Plan") under which the Company may issue incentive stock options and nonstatutory stock options. As of December 31, 2003, the Company has reserved 7,000,000 shares of common stock for issuance under the 2001 Plan. Options may be granted at an exercise price not less than fair market value for incentive stock options and not less than 85% of fair market value for nonstatutory stock options. For employees holding more than 10% of the voting rights of all classes of stock, the exercise prices for incentive and nonstatutory stock options may not be less than 110% of fair market value. The options may be exercised, in whole or in part, upon grant and generally vest over a four-year period. The 2001 Plan requires that options be exercised no later than ten years after the date of the grant. Through December 31, 2003 there were no early exercises of unvested options.

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Activity under the 2001 Plan is set forth below:

	Shares Available for Grant	Outstanding Options		Weighted Average Exercise Price
		Number of Shares	Exercise Price	
Shares reserved at Plan inception	2,000,000	—	$ —	$ —
Balances, December 31, 2001	2,000,000	—	—	—
Options granted	(1,778,692)	1,778,692	0.10	0.10
Options exercised	—	(4,000)	0.10	0.10
Balances, December 31, 2002	221,308	1,774,692	0.10	0.10
Additional shares reserved	5,000,000	—	—	—
Options granted	(1,196,577)	1,196,577	0.10–0.16	0.10
Options exercised	—	(12,702)	0.10	0.10
Options canceled	9,170	(9,170)	0.10	0.10
Balances, December 31, 2003	4,033,901	2,949,397	$ 0.10–0.16	$ 0.10

At December 31, 2003, stock options outstanding and vested by exercise price are as follows:

Options Outstanding and Exercisable			Options Vested	
Exercise Price	Number of Options Outstanding	Weighted Average Remaining Contractual Life (Years)	Number Vested	Weighted Average Exercise Price
$0.10	2,939,397	9.21	1,518,843	$ 0.10
$0.16	10,000	9.92	208	0.16
	2,949,397		1,519,051	$ 0.10

The number of options outstanding and vested at December 31, 2002 was 726,671 shares with a weighted- average exercise price of $0.10 per share.

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Deferred stock-based compensation

During the years ended December 31, 2002 and 2003, the Company issued options to certain employees under the 2001 Plan with exercise prices below the fair market value of the Company's common stock at the date of grant, determined with hindsight. In accordance with the requirements of APB No. 25, the Company has recorded deferred stock-based compensation for the difference between the exercise price of the stock option and the fair market value of the Company's stock at the date of grant. This deferred stock-based compensation is amortized to expense on a straight-line basis over the period during which the Company's right to repurchase the stock lapses or the options vest, generally four years. During the years ended December 31, 2002 and 2003, the Company has recorded deferred stock-based compensation related to these options of approximately $25,000 and $2,332,000, net of cancellations, respectively. Stock-based compensation expense related to options granted to employees were allocated to research and development and general and administrative as follows (in thousands):

	Years Ended December 31,	
	2002	2003
Research and development	$ —	$ 57
General and administrative	1	753
	$ 1	$ 810

Stock-based compensation expense related to stock options granted to non-employees is recognized on a straight-line basis, as the stock options are earned. During the years ended December 31, 2002 and 2003, the Company issued options to non-employees. The options generally vest ratably over three years. The values attributable to these options are amortized over the service period and the unvested portion of these options were remeasured at each vesting date. The Company believes that the fair value of the stock options is more reliably measurable than the fair value of the services received. The fair value of the stock options granted were revalued at each reporting date using the Black-Scholes option pricing model as prescribed by SFAS No. 123 using the following assumptions:

	Years Ended December 31,	
	2002	2003
Risk-free interest rate	4.76%	4.26%
Expected life (in years)	10	10
Dividend yield	—	—
Expected volatility	70%	70%

The stock-based compensation expense will fluctuate as the deemed fair market value of the common stock fluctuates. In connection with the grant of stock options to non-employees, the Company recorded stock-based compensation of approximately $21,000 and $256,000 for the years ended December 31, 2002 and 2003, respectively. The Company did not grant any options to purchase common stock during the period from October 17, 2001 (date of inception) to December 31, 2001. Stock-based compensation expenses related to options granted to non-employees were entirely expensed to research and development.

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
NOTES TO FINANCIAL STATEMENTS
(Continued)

NOTE 10—INCOME TAXES:

The tax effects of temporary differences that give rise to significant components of the net deferred tax asset are as follows (in thousands):

	December 31,	
	2002	2003
Capitalized start-up costs	$ 126	$ 605
Net operating loss carryforwards	947	3,407
Research and development credits	88	385
Other	4	49
Total deferred tax assets	1,165	4,446
Less: Valuation allowance	(1,165)	(4,446)
	$ —	$ —

At December 31, 2003, the Company had federal and state net operating loss carryforwards of approximately $8,592,000 and $8,328,000 available to offset future regular taxable income. The Company's federal and state net operating loss carryforwards will begin to expire in various amounts in 2021 and 2011, respectively, if not used before such time to offset future taxable income or tax liabilities. For federal and state income tax purposes, a portion of the Company's net operating loss carryforward is subject to certain limitations on annual utilization in case of changes in ownership, as defined by federal and state tax laws.

At December 31, 2003, the Company has research credit carryforwards of approximately $227,000 and $239,000 for federal and state income tax purposes, respectively. If not utilized, the federal carryforwards will expire in various amounts beginning in 2011. The California credit can be carried forward indefinitely.

The Company has established a valuation allowance against its deferred tax assets due to the uncertainty surrounding the realization of such assets. Management evaluates on a periodic basis the recoverability of deferred tax assets. At such time as it is determined that it is more likely than not that deferred tax assets are realizable, the valuation allowance will be reduced.

NOTE 11—EMPLOYEE BENEFIT PLAN:

In November 2002, the Company implemented a 401(k) Plan to provide a retirement savings program for the employees of the Company. The 401(k) Plan is maintained for the exclusive purpose of benefiting the 401(k) Plan participants. The 401(k) Plan is intended to operate in accordance with all applicable state and federal laws and regulations and, to the extent applicable, the provisions of Department of Labor regulations issued pursuant to ERISA Section 404(c). As of December 31, 2003, the Company did not make any contributions to the 401(k) Plan.

NOTE 12—SUBSEQUENT EVENTS:

On March 10, 2004, the Company granted options to purchase 2,309,500 shares and 45,000 shares of common stock under the Company's 2001 Plan at an exercise price of $0.16 per share to employees and non-employees, respectively. The total deferred stock-based compensation related to the options granted to employees amounted to approximately $10,832,000 and will be amortized to expense over the vesting period.

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
NOTES TO FINANCIAL STATEMENTS
(Continued)

Initial Public Offering

On April 7, 2004, the Board of Directors authorized management of the Company to file a registration statement with the Securities and Exchange Commission permitting the Company to sell shares of its common stock to the public. If the initial public offering is closed under the terms presently anticipated, all of the redeemable convertible preferred stock outstanding will automatically convert into shares of common stock.

2004 Equity Incentive Plan

On April 7, 2004, the Board of Directors adopted the 2004 Equity Incentive Plan (the "2004 Plan"), subject to stockholder approval. The 2004 Plan will become effective upon the completion of the Company's initial public offering and provides for the granting of incentive stock options, nonstatutory stock options, stock appreciation rights, stock awards and cash awards to employees and consultants.

A total of 4,000,000 shares of common stock have been authorized for issuance pursuant to the 2004 Plan, plus any shares which have been reserved but not issued under the 2001 Plan or issued and forfeited after the date of the initial public offering, plus any shares repurchased at or below the original purchase price and any options which expire or become unexercisable after the initial public offering, thereafter plus all shares of common stock restored by the Board of Directors pursuant to the provision of the 2004 Plan that permits options to be settled on a net appreciation basis. The Company will not grant any options under the 2001 Plan after the effectiveness of the 2004 Plan. On January 1, 2005, and annually thereafter, the authorized shares will automatically be increased by a number of shares equal to the lesser of:

- 5% of the number of the Company's shares issued and outstanding prior to the preceding December 31;
- 2,000,000 shares;
- an amount determined by the Board of Directors.

2004 Employee Stock Purchase Plan

On April 7, 2004, the Board of Directors adopted the 2004 Employee Stock Purchase Plan (the "Purchase Plan"), subject to stockholder approval. The Purchase Plan contains consecutive, overlapping 24 month offering periods. Each offering period includes four six-month purchase periods. The price of the common stock purchased will be the lower of 85% of the fair market value of the common stock at the beginning of an offering period or at the end of the purchase period. The initial offering period will commence on the effective date of the Company's initial public offering.

THRESHOLD PHARMACEUTICALS, INC.
(A DEVELOPMENT STAGE ENTERPRISE)
NOTES TO FINANCIAL STATEMENTS
(Continued)

NOTE 13—PRO FORMA COMMON SHARES OUTSTANDING AND PRO FORMA NET LOSS PER SHARE (UNAUDITED):

Pro forma basic and diluted net loss per common share have been computed to give effect to redeemable convertible preferred stock that will convert to common stock upon the closing of the Company's initial public offering (using the as-converted method) for the year ended December 31, 2003. A reconciliation of the numerator and denominator used in the calculation of pro forma net loss per common share follows (in thousands, except per share data):

	Year Ended December 31, 2003
Numerator:	
Net loss	$ (8,303)
Dividend related to beneficial conversion feature of redeemable convertible preferred stock	(40,862)
Net loss attributable to common stockholders	$ (49,165)
Denominator:	
Weighted-average number of shares outstanding used in computing basic and diluted net loss per common share	161
Adjustment to reflect the effect of the assumed conversion of the weighted-average number of preferred stock from the date of issuance, basic and diluted	11,995
Weighted-average number of shares used in computing basic and diluted pro forma net loss per common share	12,156
Pro forma net loss per common share	
Basic and diluted	$ (4.04)

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Shares

Common Stock

PROSPECTUS

, 2004

Banc of America Securities LLC **CIBC World Markets**

Lazard **William Blair & Company**

Through and including , 2004 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

Our estimated expenses (other than underwriting discounts) payable in connection with the sale of the common stock offered hereby are as follows:

SEC registration fee	$ 10,927.88
NASD filing fee	*
NASDAQ National Market listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue Sky qualification fees and expenses	*
Transfer agent and registrar fees and expenses	*
Miscellaneous fees and expenses	*
Total	$ *

* To be filed by amendment

ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The registrant's certificate of incorporation provides that no director of the registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The registrant's certificate of incorporation provides for the indemnification of directors and officers to the fullest extent permissible under Delaware law.

The Underwriting Agreement provides that the underwriters are obligated, under certain circumstances, to indemnify directors, officers and controlling persons of the registrant against certain liabilities, including liabilities under the Securities Act of 1933, as amended. Reference is made to the form of Underwriting Agreement filed as Exhibit 1.1 hereto.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

Set forth below in chronological order is information regarding the number of shares of capital stock, options and warrants issued by us since our inception on October 17, 2001. Also included is the consideration if any received by us for the securities.

There was no public offering in any such transaction and we believe that each transaction was exempt from the registration requirements of the Securities Act of 1933 by reason of Regulation D and Section 4(2) of the 1933 Act, based on the private nature of the transactions and the financial sophistication of the purchasers, all of whom had access to complete information concerning us and acquired the securities for investment and not with a view to the distribution thereof. In addition, we believe that the transactions described below with respect to the issuance of option grants to our employees and exercise of such options were exempt from registration requirements of the 1933 Act by reason of Rule 701 promulgated thereunder.

1. In October 2001, we sold 250,000 shares of common stock to George F. Tidmarsh, M.D., Ph.D., at $0.01 per share, for an aggregate purchase price of $2,500.00.

2. In January 2002, we sold 37,500 shares of common stock to a former director at $0.10 per share, for an aggregate purchase price of $3,750.00.

3. Between October 2001 and August 2002, we issued 9,000,000 shares of our Series A preferred stock to investors for an aggregate cash consideration of $9,000,000.

4. In March 2003, in connection with a loan and security agreement, we issued to Silicon Valley Bank a warrant to purchase 38,000 shares of our Series A convertible preferred stock with an exercise price of $1.00 per share. The warrant expires on the later of March 27, 2013 or seven years after the effective date of this registration statement.

5. In November 2003, we issued 24,848,484 shares of our Series B preferred stock to investors for an aggregate cash consideration of approximately $41,000,000.

6. As of March 31, 2004, we had granted and issued options to purchase 5,209,785 shares of our common stock with a weighted average price of $0.11 to a number of our employees, directors and consultants pursuant to our 2001 Equity Incentive Plan.

ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

EXHIBIT NUMBER	DESCRIPTION
1.1*	Form of Underwriting Agreement
3.1	Amended and Restated Certificate of Incorporation of the Registrant
3.2	Form of Amended and Restated Certificate of Incorporation of the Registrant to be effective upon closing of the offering
3.3	Bylaws of the Registrant
3.4	Form of Amended and Restated Bylaws of the Registration to be effective upon closing of the offering
4.1*	Specimen Certificate evidencing shares of common stock
4.2	Warrant to purchase stock, issued to Silicon Valley Bank on March 27, 2003

EXHIBIT NUMBER	DESCRIPTION
4.3	Amended and Restated Investor Rights Agreement dated as of November 17, 2003 among the Registrant and the parties listed therein
5.1*	Opinion of Heller Ehrman White & McAuliffe LLP
10.1	2001 Equity Incentive Plan
10.2	2004 Equity Incentive Plan
10.3*	2004 Employee Stock Purchase Plan
10.4	Sub-Lease Agreement by and between Thervance, Inc., a Delaware corporation, and the Registrant dated as of December 5, 2002
10.5	Amended and Restated Lease Agreement by and between HMS Gateway Office L.P., a Delaware limited partnership, and Advanced Medicine, Inc., a Delaware corporation, dated January 1, 2001
10.6+	Agreement between the Registrant, Baxter International Inc., a Delaware corporation, and Baxter Oncology GmbH, a German corporation, dated as of August 5, 2003
10.7+	Exclusive License Agreement by and between the Registrant, Dr. Theodore Lampidis and Dr. Waldemar Priebe, dated as of November 11, 2002
10.8	Loan and Security Agreement by and between the Registrant and Silicon Valley Bank, dated March 27, 2003
23.1	Consent of independent accountants
23.2*	Consent of Heller Ehrman White & McAuliffe LLP (included in Exhibit 5.1)
24.1	Powers of Attorney (included on signature page)

* To be filed by amendment

\+ Confidential treatment request as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

ITEM 17. UNDERTAKINGS

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described in Item 14 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offerings of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, Threshold Pharmaceuticals, Inc., has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California, on the 9th day of April, 2004.

THRESHOLD PHARMACEUTICALS, INC.

By: /s/ HAROLD E. SELICK

Harold E. Selick
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Harold E. Selick and Janet I. Swearson, and each of them, his true and lawful attorneys-in-fact and agents with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by the registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ HAROLD E. SELICK Harold E. Selick	Chairman of the Board of Directors and Chief Executive Officer (principal executive officer)	April 9, 2004
/s/ JANET I. SWEARSON Janet I. Swearson	Chief Financial Officer (principal financial and accounting officer)	April 9, 2004
/s/ GEORGE F. TIDMARSH George F. Tidmarsh	Founder, Director and President	April 9, 2004
/s/ MICHAEL F. POWELL Michael F. Powell	Director	April 9, 2004
/s/ RALPH E. CHRISTOFFERSEN Ralph E. Christoffersen	Director	April 9, 2004
/s/ PATRICK G. ENRIGHT Patrick G. Enright	Director	April 9, 2004
/s/ WILFRED E. JAEGER Wilfred E. Jaeger	Director	April 9, 2004

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* To be filed by amendment

\+ Confidential treatment request as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

Exhibit 3.1

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

THRESHOLD PHARMACEUTICALS, INC.

Dr. Harold E. Selick hereby certifies that:

ONE: The date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was October 17, 2001.

TWO: He is the duly elected and acting Chief Executive Officer of Threshold Pharmaceuticals, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation of this company is hereby amended and restated to read as follows:

I.

The name of this corporation is Threshold Pharmaceuticals, Inc.

II.

The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, and the name of the registered agent of the corporation in the State of Delaware at such address is The Corporation Trust Company.

III.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (***ÐGCL***").

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 83,886,483 shares, 50,000,000 shares of which shall be Common Stock (the "***Common Stock***") and 33,886,483 shares of which shall be Preferred Stock (the "***Preferred Stock***"). The Preferred Stock shall have a par value of $0.001 per share and the Common Stock shall have a par value of $0.001 per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the outstanding Common Stock and Preferred Stock of the Company (voting together as a single class on an as-if-converted basis).

C. 9,038,000 of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "***Series A Preferred***").

D. 24,848,483 of the authorized shares of Preferred Stock are hereby designated "Series B Preferred Stock" (the "***Series B Preferred***," and collectively with the Series A Preferred, the "***Series Preferred***").

E. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows with all share and dollar amounts presented on a post-split basis:

Dividend Rights.

a. (i) Holders of Series B Preferred, in preference to the holders of Series A Preferred and Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the Series B Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(ii) Holders of Series A Preferred, in preference to the holders of Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of eight percent (8%) of the Series A Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof). Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(iii) Holders of Series Preferred shall be entitled to participate pro rata in any dividends paid on shares of Common Stock on an as-if-converted basis. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

b. (i) The "Series A Original Issue Price" of the Series A Preferred shall be $1.00.

(ii) The "Series B Original Issue Price" of the Series B Preferred shall be $1.65.

c. So long as any shares of Series B Preferred are outstanding, the Company shall not pay or declare any dividend, whether in cash or property, or make any other distribution on the Series A Preferred Stock or Common Stock, or purchase, redeem or otherwise acquire for value any shares of Series A Preferred Stock or Common Stock until all dividends (set forth in Section 1(a)(i) above) on the Series B Preferred shall have been paid or declared and set apart, except for:

(i) acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares at cost upon termination of services to the Company; or

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares.

d. Subject to Section 2(d) below, the provisions of Sections 1(c) shall not apply to a dividend payable in Common Stock, or any repurchase of any outstanding securities of the Company that is approved by the Company's Board of Directors.

e. The holders of the Series Preferred expressly waive their rights, if any, as described in California Code Sections 502, 503 and 506 as they relate to repurchases of shares upon termination of employment or service as a consultant or director.

Voting Rights.

f. ***General Rights***. Each holder of shares of the Series Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series Preferred could be converted (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Common Stock) and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company. Except as otherwise provided herein or as required by law, the Series Preferred shall vote together with the Common Stock at any annual or special meeting of the stockholders and not as a separate class, and may act by written consent in the same manner as the Common Stock.

g. ***Separate Vote of Series B Preferred***. So long as at least 6,000,000 shares of Series B Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least 60% of the Series B Preferred shall be required for effecting or validating the following:

(i) any action that alters or changes the rights, preferences or privileges of the Series B Preferred in an adverse manner, including but not limited to actions that create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges senior or pari passu to the Series B Preferred, or

(ii) the amendment or waiver of any provision of the Company's Certificate of Incorporation or Bylaws in a manner adverse to the Series B Preferred.

h. ***Separate Vote of Series A Preferred***. So long as at least 4,000,000 shares of Series A Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the Series A Preferred shall be required for effecting or validating the following:

(i) any action that alters or changes the rights, preferences or privileges of the Series A Preferred in an adverse manner, including but not limited to actions that create (by reclassification or otherwise) any new class or series of shares having rights, preferences or privileges senior or pari passu to the Series A Preferred, or

(ii) the amendment or waiver of any provision of the Company's Certificate of Incorporation or Bylaws in a manner adverse to the Series A Preferred.

i. ***Separate Vote of Preferred Stock***. As long as an aggregate of 8,462,121 shares of Series Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least 75% of the then outstanding Series Preferred shall be required for effecting or validating the following:

(i) an increase or decrease in the authorized number of shares of Common Stock or Preferred Stock;

(ii) any action that results in the redemption or repurchase of any shares of Common Stock (other than pursuant to equity incentive agreements with employees or service providers giving the Company the right to repurchase shares upon the termination of services);

(iii) any action that results in an Acquisition or an Asset Transfer as those terms are defined below in Section 3(d);

(iv) any action that results in the payment or declaration of any dividend on any shares of Common or Preferred Stock; or

(v) any action that results in the issuance of debt in excess of $500,000.

j. ***Election of Board of Directors***.

(i) For so long as 4,000,000 shares of Series A Preferred remain outstanding the holders of Series A Preferred, voting as a separate class shall be entitled: (A) until May 14, 2004, to elect four members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors and (B) effective May 14, 2004, to elect two members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(ii) For so long as 6,000,000 shares of Series B Preferred remain outstanding the holders of Series B Preferred, voting as a separate class, shall be entitled to elect two members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(iii) The holders of Common Stock, voting as a separate class, shall be entitled to elect two members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors;

(iv) The holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the

Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and

(v) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the Company is subject to Section 2115 of the California General Corporation Law ("***CGCL***"). During such time or times that the Company is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

k. ***Removal.***

During such time or times that the Company is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

Liquidation Rights.

l. Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Series A Preferred or Common Stock, the holders of Series B Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share of Series B Preferred equal to the Series B Original Issue Price plus all declared and unpaid dividends on the Series B Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) for each share of Series B Preferred held by them. If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series B Preferred of the liquidation preference set forth in this Section 3(a), then such assets (or consideration) shall be distributed among the holders of Series B Preferred at the time

outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

m. After the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above, upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Common Stock, the holders of Series A Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution, or the consideration received in such transaction, an amount per share of Series A Preferred equal to the Series A Original Issue Price plus all declared and unpaid dividends on the Series A Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof) for each share of Series A Preferred held by them. If, upon any such liquidation, dissolution, or winding up, the assets of the Company (or the consideration received in such transaction) shall be insufficient to make payment in full to all holders of Series A Preferred of the liquidation preference set forth in this Section 3(b), then such assets (or consideration) shall be distributed among the holders of Series A Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

n. After the payment of the full liquidation preference of the Series B Preferred as set forth in Section 3(a) above and the Series A Preferred as set forth in Section 3(b) above, the remaining assets of the Company legally available for distribution (or the consideration received in such transaction), if any, shall be distributed ratably to the holders of the Common Stock.

o. The following events shall be considered a liquidation under this Section:

(i) (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company (each, an "***Acquisition***"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "***Asset Transfer***").

p. In the event of an Acquisition or Asset Transfer, if the consideration received by Company is property other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(i) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30 day period ending 3 days prior to the closing;

(ii) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending 3 days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(iv) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (d)(i) or (ii) to reflect the approximate fair market value thereof, as determined by the Board of Directors.

Conversion Rights. The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "***Conversion Rights***"):

q. ***Optional Conversion***. (i) Subject to and in compliance with the provisions of this Section 4, any shares of Series A Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series A Preferred Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series A Preferred being converted. (ii) Subject to and in compliance with the provisions of this Section 4, any shares of Series B Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series B Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series B Preferred Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series B Preferred being converted.

r. ***Conversion Rates***. (i) The conversion rate in effect at any time for conversion of the Series A Preferred (the "***Series A Preferred Conversion Rate***") shall be the quotient obtained by dividing the Series A Original Issue Price by the "Series A Preferred Conversion Price," calculated as provided in Section 4(c). (ii) The conversion rate in effect at any time for conversion of the Series B Preferred (the "***Series B Preferred Conversion Rate***") shall be the quotient obtained by dividing the Series B Original Issue Price of the Series B Preferred by the "Series B Preferred Conversion Price," calculated as provided in Section 4(c).

s. ***Conversion Prices***. (i) The conversion price for the Series A Preferred shall initially be the Series A Original Issue Price (the "***Series A Preferred Conversion Price***"). The Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted. (ii) The conversion price for the Series B Preferred shall initially be the Series B Original Issue Price (the "***Series B Preferred Conversion Price***"). The Series B Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series B Preferred Conversion Price herein shall mean the Series B Preferred Conversion Price as so adjusted.

t. ***Mechanics of Conversion***. Each holder of Series A Preferred or Series B Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

u. ***Adjustment for Stock Splits and Combinations***. If at any time or from time to time after the date that the first share of Series B Preferred is issued (the "***Original Issue Date***") the Company effects a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series A Preferred Conversion Price and the Series B Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series A Preferred Conversion Price and the Series B Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

v. ***Adjustment for Common Stock Dividends and Distributions***. If at any time or from time to time after the Original Issue Date the Company pays a dividend or other distribution in additional shares of Common Stock, the Series A Preferred Conversion Price and the Series B Preferred Conversion Price that are then in effect shall be decreased as of the time of such issuance, as provided below:

(i) Each of the Series A Preferred Conversion Price and the Series B Preferred Conversion Price then in effect shall be adjusted by multiplying it by a fraction equal to:

(ii) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and

(a) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

(b) If the Company fixes a record date to determine which holders of Common Stock are entitled to receive such dividend or other distribution, the Series A Preferred Conversion Price and the Series B Preferred Conversion Price shall be fixed as of the close of business on such record date and the number of shares of Common Stock shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Preferred Conversion Price and the Series B Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Preferred Conversion Price and the Series B Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

w. ***Adjustment for Reclassification, Exchange and Substitution***. If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred or Series B Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series A Preferred and/or Series B Preferred shall then and thereafter have the right to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred and/or Series B Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

x. ***Reorganizations, Mergers or Consolidations***. If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series A Preferred Conversion Price and the Series B Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

y. ***Certificate of Adjustment***. In each case of an adjustment or readjustment of the Series A Preferred Conversion Price and the Series B Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred,

if the Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Preferred Conversion Price and Series B Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

z. ***Sale of Shares Below Conversion Prices.***

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this Section 4(i) to have issued or sold, Additional Shares of Common Stock (as defined below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined below) less than the then effective Series A Preferred Conversion Price or Series B Preferred Conversion Price (or both, as the case may be), then and in each such case, the then existing Series A Preferred Conversion Price or Series B Preferred Conversion Price (or both, as the case may be) shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series A Preferred Conversion Price or Series B Preferred Conversion Price (as applicable) in effect immediately prior to such issuance or sale by a fraction equal to:

(a) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration received (as defined below) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such then existing Series A Preferred Conversion Price or such then existing Series B Preferred Conversion Price (as applicable), and

(b) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, (B) the number of shares of Common Stock into which the then outstanding shares of Series A Preferred or Series B Preferred (as applicable) could be converted if fully converted on the day immediately preceding the given date, and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date. No adjustment shall be made to the Series A Preferred Conversion Price or Series B Preferred

Conversion Price in an amount less than one cent per share. Any adjustment otherwise required by this Section 4(i) that is not required to be made due to the preceding sentence shall be included in any subsequent adjustment to the Series A Preferred Conversion Price or Series B Preferred Conversion Price.

(ii) For the purpose of making any adjustment required under this Section 4(j), the aggregate consideration received by the Company for any issue or sale of securities (the "***Aggregate Consideration***") shall be defined as: (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined below) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(j), if the Company issues or sells (A) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "***Convertible Securities***") or (B) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series A Preferred Conversion Price or the Series B Preferred Conversion Price (or both, as the case may be), in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities plus:

(a) in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options; and

(b) in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company upon the conversion thereof (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities); provided that if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses.

(c) If the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such

minimum amount of consideration is reduced; provided further, that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities.

(d) No further adjustment of the Series A Preferred Conversion Price or Series B Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock or the exercise of any such rights or options or the conversion of any such Convertible Securities.

(iv) For the purpose of making any adjustment to the Series A Preferred Conversion Price or Series B Preferred Conversion Price required under this Section 4(i) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(j) (including shares of Common Stock subsequently reacquired or retired by the Company), other than:

(a) shares of Common Stock issued upon conversion of the Series Preferred;

(b) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like after the filing date hereof) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors; provided, however, that such amount shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, options or warrants outstanding as of the Original Issue Date ("Outstanding Options") as a result of the termination of such Outstanding Options or (ii) reacquired by the Company from employees, directors or consultants at cost pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company;

(c) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date or other agreements approved by the Board of Directors prior to the Original Issue Date;

(d) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition, strategic alliance or similar business combination approved by the Board of Directors, and

(e) shares of Common Stock or Preferred Stock issued pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board of Directors.

(f) any Common Stock or Convertible Securities issued in connection with strategic transactions involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements.

References to Common Stock in the subsections of this clause (iv) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(j). The "***Effective Price***" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(j), into the Aggregate Consideration received, or deemed to have been received by the Company for such issue under this Section 4(j), for such Additional Shares of Common Stock.

aa. ***Notices of Record Date***. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or (ii) any Acquisition or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least ten days prior to the record date specified therein (or such shorter period approved by the holders of a majority of the outstanding Series Preferred) voting as a single class) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

bb. ***Automatic Conversion***.

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series A Conversion Price or Series B Preferred Conversion Price, as the case may be, (1) at any time upon the affirmative election of the holders of at least 75% of the outstanding shares of the Series Preferred, voting as a single class, or (2) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company for a total offering of not less than $50,000,000 (before deduction of underwriter's commission and expenses) and with a pre-money valuation of not less than $200,000,000. Upon an automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of either of the events specified in Section 4(l)(i) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such

shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

cc. ***Fractional Shares***. No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

dd. ***Reservation of Stock Issuable Upon Conversion***. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

ee. ***Notices***. Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address or electronic record of such holder appearing on the books of the Company.

ff. ***Payment of Taxes***. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and

delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

gg. ***No Dilution or Impairment***. Without the consents of the holders of then outstanding Series Preferred as required under Sections 2(b), 2(c) and 2(d), the Company shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

V.

A. The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

B. The Company is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the Company and its stockholders through bylaw provisions or through agreements with the agents, or through stockholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or times that the Company is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

C. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

VI.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Restated Certificate.

B. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company; provided however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

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

* * * *

ONE: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of the Company.

TWO: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

IN WITNESS WHEREOF, THRESHOLD PHARMACEUTICALS, INC.has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 14th day of November, 2003.

THRESHOLD PHARMACEUTICALS, INC.

By: /s/ Harold E. Selick

Dr. Harold E. Selick,
Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
THRESHOLD PHARMACEUTICALS, INC.

Threshold Pharmaceuticals, Inc., a corporation, organized and existing under the laws of the State of Delaware (the "***Corporation***"), hereby certifies as follows:

1. The original Certificate of Incorporation was filed with the Secretary of State of Delaware on October 17, 2001.

2. A Certificate of Amendment of the Certificate of Incorporation was filed with the Secretary of State of Delaware on February 6, 2002.

3. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on November 14, 2003.

4. The Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 242, 245 and 228 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation, and prompt written notice was duly given pursuant to Section 228 to those stockholders who did not approve the Amended and Restated Certificate of Incorporation by written consent.

5. The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Threshold Pharmaceuticals, Inc. has caused this Certificate to be signed by the Chief Executive Officer this__ day of _____, 2004.

THRESHOLD PHARMACEUTICALS, INC.

By: _____

Harold E. Selick, Chief Executive Officer

EXHIBIT A

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

THRESHOLD PHARMACEUTICALS, INC.

FIRST

The name of the Corporation is Threshold Pharmaceuticals, Inc.

SECOND

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law.

FOURTH:

Upon the effective date of the filing of this Amended and Restated Certificate of Incorporation, each share of the Corporation's outstanding capital stock shall be converted and reconstituted into _____ shares of Common Stock of the Corporation (the "Stock Split"). No further adjustment of any preference or price set forth in this Article Fourth shall be made as a result of the Stock Split, as all share amounts and per share numbers set forth in this Amended and Restated Certificate of Incorporation have been appropriately adjusted to reflect the Stock Split.

A. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 152,000,000, consisting of 150,000,000 shares of Common Stock, par value $0.001 per share (the "Common Stock") and 2,000,000 shares of Preferred Stock, par value $0.001 per share (the "Preferred Stock").

B. The board of directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereinafter referred to as a "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Certificate of Designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Certificate of Incorporation (including any Certificate of Designations relating to any series of Preferred Stock).

FIFTH:

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The business and affairs of the Corporation shall be managed by or under the direction of the board of directors. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

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

C. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

D. Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board or the President or by the board of directors acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of this Certificate of Incorporation, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

E. In addition to the requirements of law and any other provisions hereof (and notwithstanding the fact that approval by a lesser vote may be permitted by law or any other provision thereof), the affirmative vote of the holders of at least 66 2/3% of the voting power of the then-outstanding stock shall be required to amend, alter, repeal or adopt any provision inconsistent with this Sections C, D and E of this Article Fifth.

SIXTH:

A. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the board of directors pursuant to a resolution adopted by a majority of the Whole Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided into three classes, with the term of office of the first class to expire at the Corporation's first annual meeting of stockholders following the first sale of the Corporation's Common Stock pursuant to a firmly underwritten registered public offering (the "IPO"), the term of office of the second class to expire at the Corporation's second annual meeting of stockholders following the IPO and the term of office of the third class to expire at the Corporation's third annual meeting of stockholders following the IPO, and thereafter for each such term to expire at each third succeeding annual meeting of stockholders after such election and with each director to hold office until his or her successor shall have been duly elected and qualified. At each annual meeting of stockholders, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified.

B. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the board of directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the board of directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires or until such director's successor shall have been duly elected and qualified. No

decrease in the authorized number of directors shall shorten the term of any incumbent director.

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

D. In addition to the requirements of law and any other provisions hereof (and notwithstanding the fact that approval by a lesser vote may be permitted by law or any other provision thereof), the affirmative vote of the holders of at least 66 2/3% of the voting power of the then-outstanding stock shall be required to amend, alter, repeal or adopt any provision inconsistent with this Article Sixth.

SEVENTH:

The board of directors is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. Any adoption, amendment or repeal of the bylaws of the Corporation by the board of directors shall require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal the bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of the bylaws of the Corporation. In addition to the requirements of law and any other provisions hereof (and notwithstanding the fact that approval by a lesser vote may be permitted by law or any other provision thereof), the affirmative vote of the holders of at least 66 2/3% of the voting power of the then-outstanding stock shall be required to amend, alter, repeal or adopt any provision inconsistent with this Article Seventh.

EIGHTH:

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

NINTH

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation.

Exhibit 3.3

BYLAWS

OF

THRESHOLD PHARMACEUTICALS, INC.
(A DELAWARE CORPORATION)

AS AMENDED NOVEMBER 14, 2003

TABLE OF CONTENTS

BYLAWS

OF

THRESHOLD PHARMACEUTICALS, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Caslte. (Del. Code Ann., tit. 8, § 131)

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require. (Del. Code Ann., tit. 8, § 122(8))

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. (Del. Code Ann., tit. 8, § 122(3))

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL"). (Del. Code Ann., tit. 8, § 211(a))

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. (Del. Code Ann., tit. 8, § 211(b)).

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10h) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any,

on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

(c) Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption) or (iv) by the holders of shares entitled to cast not less than twenty percent (20%) of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors shall fix. At any time or times that the corporation is subject to Section 2115(b) of the California General Corporation Law ("CGCL"), stockholders holding five percent (5%) or more of the outstanding shares shall have the right to call a special meeting of stockholders as set forth in Section 18(b) herein.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given. (Del. Code Ann., tit. 8, §§ 222, 229, 232)

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series. (Del. Code Ann., tit. 8, § 216)

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. (Del. Code Ann., tit. 8, § 222(c))

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a

stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. (Del. Code Ann., tit. 8, §§ 211(e), 212(b))

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest. (Del. Code Ann., tit. 8, § 217(b))

Section 12. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law. (Del. Code Ann., tit. 8, § 219)

Section 13. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. (Del. Code Ann., tit. 8, § 228)

(b) Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of

Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. (Del. Code Ann., tit. 8, § 228)

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

(d) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. (Del. Code Ann., tit. 8 § 228(d))

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote,

present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number and Term of Office. The authorized number of directors of the corporation shall be not be less than five (5) nor more than a maximum of eight (8) and that the number of directors presently authorized shall be set at eight (8) directors. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient. (Del. Code Ann., tit. 8, §§ 141(b), 211(b), (c))

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. (Del. Code Ann., tit. 8, § 141(a))

Section 17. Term of Directors.

(a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(b) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the corporation is subject to Section 2115(b) of the CGCL. During such time or times that the corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may

cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

Section 18. Vacancies.

(a) Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director. (Del. Code Ann., tit. 8, § 223(a), (b)).

(b) At any time or times that the corporation is subject to §2115(b) of the CGCL, if, after the filling of any vacancy, the directors then in office who have been elected by stockholders shall constitute less than a majority of the directors then in office, then

(i) any holder or holders of an aggregate of five percent (5%) or more of the total number of shares at the time outstanding having the right to vote for those directors may call a special meeting of stockholders; or

(ii) the Superior Court of the proper county shall, upon application of such stockholder or stockholders, summarily order a special meeting of the stockholders, to be held to elect the entire board, all in accordance with Section 305(c) of the CGCL, the term of office of any director shall terminate upon that election of a successor. (CGCL §305(c).

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those

who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified. (Del. Code Ann., tit. 8, §§ 141(b), 223(d))

Section 20. Removal.

(a) Subject to any limitations imposed by applicable law (and assuming the corporation is not subject to Section 2115 of the CGCL), the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors.

(b) During such time or times that the corporation is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on such removal; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

Section 21. Meetings

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for a regular meeting of the Board of Directors. (Del. Code Ann., tit. 8, § 141(g))

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any director. (Del. Code Ann., tit. 8, § 141(g))

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. (Del. Code Ann., tit. 8, § 141(i))

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, postage prepaid at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. (Del. Code Ann., tit. 8, § 229)

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting. (Del. Code Ann., tit. 8, § 229)

Section 22. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. (Del. Code Ann., tit. 8, § 141(b))

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws. (Del. Code Ann., tit. 8, § 141(b))

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. (Del. Code Ann., tit. 8, § 141(f))

Section 24. Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if

any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor. (Del. Code Ann., tit. 8, § 141(h))

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation. (Del. Code Ann., tit. 8, § 141(c))

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws. (Del. Code Ann., tit. 8, § 141(c))

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock, the provisions of subsections (a) or (b) of this Bylaw may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. (Del. Code Ann., tit. 8, §141(c))

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon

notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. (Del. Code Ann., tit. 8, §§ 141(c), 229)

Section 26. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 27. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors. (Del. Code Ann., tit. 8, §§ 122(5), 142(a), (b))

Section 28. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. (Del. Code Ann., tit. 8, § 141(b), (e))

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly

incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28. (Del. Code Ann., tit. 8, § 142(a))

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such

other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

Section 29. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 30. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer. (Del. Code Ann., tit. 8, § 142(b))

Section 31. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 32. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158).

Section 33. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such

authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President. (Del. Code Ann., tit. 8, § 123)

ARTICLE VII

SHARES OF STOCK

Section 34. Form and Execution of Certificates. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. (Del. Code Ann., tit. 8, § 158)

Section 35. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed. (Del. Code Ann., tit. 8, § 167)

Section 36. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon

the surrender of a properly endorsed certificate or certificates for a like number of shares. (Del. Code Ann., tit. 8, § 201, tit. 6, § 8- 401(1))

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL. (Del. Code Ann., tit. 8, § 160 (a))

Section 37. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. (Del. Code Ann., tit. 8, § 213)

Section 38. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware. (Del. Code Ann., tit. 8, §§ 213(a), 219)

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 39. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 40. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law. (Del. Code Ann., tit. 8, §§ 170, 173)

Section 41. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. (Del. Code Ann., tit. 8, § 171)

ARTICLE X

FISCAL YEAR

Section 42. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Officers. The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and *provided, further,* that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Employees and Other Agents. The corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or

proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 43 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such

action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) Amendments. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 43 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(1) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Bylaw.

ARTICLE XII

NOTICES

Section 44. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means. (Del. Code Ann., tit. 8, §§ 222, 232)

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws.

If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained. (Del. Code Ann., tit. 8, § 222)

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE XIII

AMENDMENTS

Section 45. Amendments. The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the corporation.

ARTICLE XIV

RIGHT OF FIRST REFUSAL

Section 46. Right of First Refusal. No holder of common stock shall sell, assign, pledge, or in any manner transfer any of the shares of stock, of the corporation or any right or

interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the requirements hereinafter set forth in this bylaw:

(a) If the holder of common stock desires to sell or otherwise transfer any of his shares of stock, then the holder of common stock shall first give written notice thereof to the corporation. The notice shall name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

(b) For thirty (30) days following receipt of such notice, the corporation shall have the option to purchase all of the shares specified in the notice at the price and upon the terms set forth in such notice; *provided, however,* that, with the consent of the holder of common stock, the corporation shall have the option to purchase a lesser portion of the shares specified in said notice at the price and upon the terms set forth therein. In the event of a gift, property settlement or other transfer in which the proposed transferee is not paying the full price for the shares, and that is not otherwise exempted from the provisions of this Section 46, the price shall be deemed to be the fair market value of the stock at such time as determined in good faith by the Board of Directors. In the event the corporation elects to purchase all of the shares or, with consent of the holder of common stock, a lesser portion of the shares, it shall give written notice to the transferring holder of common stock of its election and settlement for said shares shall be made as provided below in paragraph (d).

(c) The corporation may assign its rights hereunder.

(d) In the event the corporation and/or its assignee(s) elect to acquire any of the shares of the transferring holder of common stock as specified in the notice of the transferring holder of common stock, the Secretary of the corporation shall so notify the transferring holder of common stock and settlement thereof shall be made in cash within thirty (30) days after the Secretary of the corporation receives said transferring holder of common stock's notice; provided that if the terms of payment set forth in said transferring holder of common stock's notice were other than cash against delivery, the corporation and/or its assignee(s) shall pay for said shares on the same terms and conditions set forth in the notice of the transferring holder of common stock.

(e) In the event the corporation and/or its assignees(s) do not elect to acquire all of the shares specified in the notice of the transferring holder of common stock, said transferring holder of common stock may, within the sixty-day period following the expiration of the option rights granted to the corporation and/or its assignees(s) herein, transfer the shares specified in said transferring holder of common stock's notice which were not acquired by the corporation and/or its assignees(s) as specified in the notice of the transferring holder of common stock. All shares so sold by said transferring holder of common stock shall continue to be subject to the provisions of this bylaw in the same manner as before said transfer.

(f) Anything to the contrary contained herein notwithstanding, the following transactions shall be exempt from the provisions of this bylaw:

(1) A transfer of any or all shares by a holder of common stock held either during that holder's lifetime or on death by will or intestacy to immediate family of such

holder of common stock or to any custodian or trustee for the account of such holder of common stock or immediate family of such holder of common stock or to any limited partnership of which the holder of common stock, members of the immediate family of such holder of common stock or any trust for the account of such holder of common stock or the immediate family of such holder of common stock will be the general of limited partner(s) of such partnership. “Immediate family” as used herein shall mean spouse, lineal descendant, father, mother, brother, or sister of the holder of common stock making such transfer.

(2) A bona fide pledge or mortgage of any shares with a commercial lending institution by a holder of common stock, provided that any subsequent transfer of said shares by said institution shall be conducted in the manner set forth in this bylaw.

(3) A transfer of any or all shares to the corporation or to any other stockholder of the corporation by a holder of common stock.

(4) A transfer of any or all shares to a person who, at the time of such transfer, is an officer or director of the corporation by a holder of common stock.

(5) A transfer of any or all of its shares pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization, or pursuant to a sale of all or substantially all of the stock or assets by a holder of common stock that is a corporation.

(6) A transfer of any or all of its shares to any or all of its stockholders by a holder of common stock that is a corporation .

(7) A transfer by a holder of common stock which is a limited or general partnership to any or all of its partners or former partners.

In any such case, the transferee, assignee, or other recipient shall receive and hold such stock subject to the provisions of this bylaw, and there shall be no further transfer of such stock except in accord with this bylaw.

(g) The provisions of this bylaw may be waived with respect to any transfer either by the corporation, upon duly authorized action of its Board of Directors, or by the holders of common stock, upon the express written consent of the owners of a majority of the voting power of the corporation (excluding the votes represented by those shares to be transferred by the transferring holder of common stock). This bylaw may be amended or repealed either by a duly authorized action of the Board of Directors or by the holders of common stock, upon the express written consent of the owners of a majority of the voting power of the corporation.

(h) Any sale or transfer, or purported sale or transfer, of securities of the corporation shall be null and void unless the terms, conditions, and provisions of this bylaw are strictly observed and followed.

(i) The foregoing right of first refusal shall terminate on either of the following dates, whichever shall first occur:

(1) On September 1, 2011; or

(2) Upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

(j) The certificates representing shares of stock of the corporation shall bear on their face the following legend so long as the foregoing right of first refusal remains in effect:

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION."

ARTICLE XV

LOANS TO OFFICERS

Section 47. Loans to Officers. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute. (Del. Code Ann., tit. 8, §143)

ARTICLE XVI

MISCELLANEOUS

Section 48. Annual Report.

(a) Subject to the provisions of paragraph (b) of this Bylaw, the Board of Directors shall cause an annual report to be sent to each stockholder of the corporation not later than one hundred twenty (120) days after the close of the corporation's fiscal year. Such report shall include a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year, accompanied by any report thereon of independent accounts or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation. When there are more than 100 stockholders of record of the corporation's shares, as determined by Section 605 of the CGCL, additional information as required by Section 1501(b) of the CGCL shall also be contained in such report, provided that if the corporation has a class of securities registered under Section 12 of the 1934 Act, the 1934 Act shall take precedence. Such report shall be sent to stockholders at least fifteen (15) days

prior to the next annual meeting of stockholders after the end of the fiscal year to which it relates.

(b) If and so long as there are fewer than 100 holders of record of the corporation's shares, the requirement of sending of an annual report to the stockholders of the corporation is hereby expressly waived.

Exhibit 3.4

AMENDED AND RESTATED BYLAWS
OF
THRESHOLD PHARMACEUTICALS, INC.
a Delaware corporation

ARTICLE I
STOCKHOLDERS

1. ***Annual Meeting.*** An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date and at such time as the Board of Directors shall each year fix, which date shall be within 13 months of the last annual meeting of stockholders.

2. ***Advance Notice; Purpose of Meeting.*** Nominations of persons for election to the Board and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the notice given by the Corporation with respect to such meeting, (b) by or at the direction of the Board or (c) by any stockholder of record of the Corporation who was a stockholder of record at the time of the giving of the notice provided for in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this section.

For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of the foregoing paragraph, (1) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (2) such business must be a proper matter for stockholder action under the General Corporation Law of the State of Delaware, (3) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the Corporation with a Solicitation Notice, as that term is defined in subclause (c)(iii) of this paragraph, such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such stockholder or beneficial holder to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice and (4) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this section. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less 120 days, and not more than 150 days, prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that if the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 60 days after the anniversary date of the preceding

year's annual meeting, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of (i) the 150th day prior to such annual meeting or (ii) the 10th day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director and all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and such person's written consent to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and number of shares of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

Notwithstanding anything in the second sentence of the second paragraph of this Section to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least 55 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

Only persons nominated in accordance with the procedures set forth in this Section shall be eligible to serve as directors and only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section. The chairman of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws to declare that such defective proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

For purposes of this Section, "***public announcement***" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable

national news service or in a document publicly filed by the Corporation with the securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

Notwithstanding the foregoing provisions of this Section, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section. Nothing in this Section shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

3. ***Special Meetings; Notice.*** Special meetings of the stockholders, other than those required by statute, may be called at any time in accordance with the provisions of the Certificate of Incorporation only by the Chairman of the Board of Directors or the President or by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board of Directors. For purposes of these Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. The Board of Directors may postpone or reschedule any previously scheduled special meeting.

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of record of the Corporation who is a stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 2 of this Article I. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice required by the second paragraph of Section 2 of this Article I shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

Notwithstanding the foregoing provisions of this Section 3, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 3. Nothing in this Section 3 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

4. ***Notice of Meetings.*** Notice of the place, date, and time of all meetings of the stockholders, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by

law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation).

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

5. ***Quorum.*** At any meeting of the stockholders, the holders of a majority of all of the shares of stock entitled to vote at the meeting, present in person or by proxy when the meeting convenes, shall constitute a quorum for all purposes and for the entirety of the meeting, unless or except to the extent that the presence of a larger number may be required by law. Where a separate vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, date, or time.

6. ***Organization.*** Such person as the Board of Directors may have designated or, in the absence of such a person, the Chairman of the Board, or in his or her absence, the President of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

7. ***Conduct of Business.*** The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. The chairman of the meeting shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

8. ***Proxies and Voting.*** At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or

transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

9. ***Stock List.*** A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder for a period of at least 10 days prior to the meeting in the manner provided by law.

The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

ARTICLE II
BOARD OF DIRECTORS

1. ***Number, Election and Term of Directors.*** Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board. Each director shall be elected in the manner set forth in the Certificate of Incorporation and shall hold office until such time as set forth therein.

2. ***Newly Created Directorships and Vacancies.*** Any vacancies shall be filled in the manner specified in the Certificate of Incorporation. Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause

shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall serve for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires or until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

3. ***Regular Meetings.*** Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

4. ***Special Meetings.*** Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or by two or more directors then in office and shall be held at such place, on such date, and at such time as they or he or she shall fix. Notice of the place, date, and time of each such special meeting shall be given each director by whom it is not waived by mailing written notice not less than five days before the meeting or by telephone or by telegraphing or telexing or by facsimile transmission of the same not less than 24 hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

5. ***Quorum.*** At any meeting of the Board of Directors, a majority of the Whole Board shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

6. ***Participation in Meetings By Conference Telephone.*** Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

7. ***Conduct of Business.*** At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided herein or required by law. Action may be taken by the Board of Directors without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors. Such filing shall be made in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

8. ***Powers.*** The Board of Directors may, except as otherwise required by law, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

(a) To declare dividends from time to time in accordance with law;

(b) To purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;

(c) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;

(d) To remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(e) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(f) To adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;

(g) To adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(h) To adopt from time to time regulations, not inconsistent with these Bylaws, for the management of the Corporation's business and affairs.

9. ***Compensation of Directors.*** Unless otherwise restricted by the certificate of incorporation, the Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or paid a stated salary or paid other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE III
COMMITTEES

1. ***Committees of the Board of Directors.*** The Board of Directors may from time to time designate committees of the Board, with such lawfully delegable powers and duties as it

thereby confers, to serve at the pleasure of the Board and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

2. ***Conduct of Business.*** Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; a majority of the members shall constitute a quorum unless the committee shall consist of one (1) or two (2) members, in which event one (1) member shall constitute a quorum; and all matters shall be determined by the affirmative vote of a majority of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be made in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV
OFFICERS

1. ***Titles.*** The officers of the Corporation shall be chosen by the Board of Directors and shall include a Chief Executive Officer or a President or both, a Chief Financial Officer, a Secretary and a Treasurer. The Board of Directors may also appoint other officers as are desired, including one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers. Any number of offices may be held by the same person. All officers shall perform their duties and exercise their powers subject to the Board of Directors.

2. ***Election, Term of Office and Vacancies.*** The officers shall be elected annually by the Board of Directors at its regular meeting following the annual meeting of the stockholders, and each officer shall hold office until the next annual election of officers and until the officer's successor is elected and qualified, or until the officer's death, resignation or removal. Any officer may be removed at any time, with or without cause, by the Board of Directors. Any vacancy occurring in any office may be filled by the Board of Directors.

3. ***Resignation.*** Any officer may resign at any time upon notice to the Corporation without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. The resignation of an officer shall be effective when given unless the officer specifies a later time. The resignation shall be effective regardless of whether it is accepted by the Corporation.

4. ***Chief Executive Officer.*** The Board of Directors shall designate a Chief Executive Officer who may be the President or another person and may prescribe the duties and powers of the Chief Executive Officer. Subject to the provisions of these bylaws and to the direction of the Board of Directors, the Chief Executive Officer shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive or which are delegated to him or her by the Board of Directors. The Chief Executive Officer shall have power to sign all contracts and other instruments of the Corporation which are authorized.

5. ***President.*** The President shall perform the duties and exercise the powers of the Chief Executive Officer if the Corporation does not have a Chief Executive Officer or in the event of the absence or disability of the Chief Executive Officer. The President shall otherwise have such powers and duties which are delegated to him or her by the Board of Directors. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized. If the Board of Directors has not designated a person as the Chief Executive Officer or the Chief Executive Officer has resigned and not been replaced, the President shall be the Chief Executive Officer of the Corporation, in which case all references herein to the President shall be deemed to refer to the President and/or the Chief Executive Officer, as relevant.

6. ***Vice President.*** Each Vice President shall have such powers and duties as may be delegated to him or her by the Board of Directors. One Vice President or the Chief Financial Officer may be designated by the Board to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

7. ***Chief Financial Officer; Treasurer and Assistant Treasurers.*** Unless the Board of Directors designates another Treasurer, the Chief Financial Officer will be the Treasurer of the Corporation. Unless otherwise determined by the Board of Directors or the Chief Executive Officer, the Chief Financial Officer or the Treasurer shall have custody of the corporate funds and securities, shall keep adequate and correct accounts of the Corporation's properties and business transactions, shall disburse such funds of the Corporation as may be ordered by the Board or the Chief Executive Officer (taking proper vouchers for such disbursements), and shall render to the Chief Executive Officer and the Board, at regular meetings of the Board or whenever the Board may require, an account of all transactions and the financial condition of the Corporation. At the request of the Treasurer, or in the Treasurer's absence or disability, any Assistant Treasurer may perform any of the duties of the Treasurer and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Treasurer.

8. ***Secretary and Assistant Secretaries.*** The Secretary shall issue all authorized notices for and shall keep minutes of all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe. At the request of the Secretary, or in the Secretary's absence or disability, any Assistant Secretary shall perform any of the duties of the

Secretary and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Secretary.

9. ***Other Officers.*** The other officers of the Corporation, if any, shall exercise such powers and perform such duties as the Board of Directors or the Chief Executive Officer shall prescribe.

10. ***Compensation.*** The Board of Directors shall fix the compensation of the Chief Executive Officer and may fix the compensation of other employees of the Corporation, including the other officers. If the Board does not fix the compensation of the other officers, the Chief Executive Officer shall fix such compensation.

11. ***Actions with Respect to Securities of Other Corporations.*** Unless otherwise directed by the Board of Directors, the Chairman of the Board, the President or any officer of the Corporation authorized by the Chairman of the Board or the President, shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of, or with respect to any action of stockholders of, any other corporation in which the Corporation may hold securities and otherwise shall have power to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other corporation.

12. ***Delegation of Authority.*** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

ARTICLE V
STOCK

1. ***Certificates of Stock.*** Each stockholder shall be entitled to a certificate signed by, or in the name of the Corporation by, the Chairman or Vice Chairman or the President or a Vice President, and by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, certifying the number of shares owned by him or her. Any or all of the signatures on the certificate may be by facsimile.

2. ***Transfers of Stock.*** Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of Article V of these Bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

3. ***Record Date.*** In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall

not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than 60 nor less than 10 days before the date of any meeting of stockholders, nor more than 60 days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

4. ***Lost, Stolen or Destroyed Certificates.*** In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

5. ***Regulations.*** The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI
NOTICES

1. ***Notices.*** If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

2. ***Waivers.*** A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting to the timeliness of notice.

ARTICLE VII
MISCELLANEOUS

1. ***Facsimile Signatures.*** In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

2. ***Corporate Seal.*** The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

3. ***Reliance upon Books, Reports and Records.*** Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

4. ***Fiscal Year.*** The fiscal year of the Corporation shall be as fixed by the Board of Directors.

5. ***Time Periods.*** In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII
INDEMNIFICATION OF DIRECTORS AND OFFICERS

1. ***Right to Indemnification.*** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "***proceeding***"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "***indemnitee***"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader

indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

2. ***Right to Advancement of Expenses.*** The right to indemnification conferred in Section 1 of this ARTICLE VIII shall include the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "***advancement of expenses***"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "***undertaking***"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "***final adjudication***") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

3. ***Right of Indemnitee to Bring Suit.*** If a claim under Section 1 or 2 of this Article VIII is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought

by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

4. ***Non-Exclusivity of Rights.*** The rights to indemnification and to the advancement of expenses conferred in this ARTICLE VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

5. ***Insurance.*** The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

6. ***Indemnification of Employees and Agents of the Corporation.*** The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any officer, employee or agent of the Corporation to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

7. ***Nature of Rights.*** The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

ARTICLE IX
AMENDMENTS

In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to adopt, amend and repeal these Bylaws subject to the power of the holders of capital stock of the Corporation to adopt, amend or repeal the Bylaws; provided, however, that, with respect to the power of holders of capital stock to adopt, amend and repeal Bylaws of the Corporation, notwithstanding any other provision of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, these Bylaws or any preferred stock, the affirmative vote of the holders of at least 66 2/3% percent of the voting power of all of the then-outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of these Bylaws.

CERTIFICATE OF SECRETARY

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title of these Bylaws and that such Bylaws were duly adopted by the Board of Directors of such corporation as of _____, 2004.

_____

Secretary

Exhibit 4.2

WARRANT TO PURCHASE STOCK

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: Threshold Pharmaceuticals, Inc., a Delaware corporation
Number of Shares: 38,000
Class of Stock: Series A Preferred
Warrant Price: $1.00 per share
Issue Date: March 27, 2003
Expiration Date: The later of: (i) March 27, 2013 or (ii) seven (7) years after the date of the initial public offering of the Company's common stock pursuant to a Registration Statement on Form S-1 (or its successor) ("the "Initial Offering") filed under the Securities Act of 1933, as amended (the "Act").

THIS WARRANT CERTIFIES THAT, for the agreed upon value of $1.00 and for other good and valuable consideration, SILICON VALLEY BANK ("Holder") is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "Shares") of the company (the "Company") at the Warrant Price, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other from of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market and the shares are common stock, the fair market value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, or surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Treatment of Warrant at Acquisition.

(A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition in which the sole consideration is cash, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information

as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

(B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is an "arms length" sale of all or substantially all of the Company's assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a "True Asset Sale"), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

(C) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition of the Company by a publicly traded acquirer in which the consideration is the publicly traded securities of the acquirer or of an Acquisition under paragraph (B) where the acquirer is an Affiliate if, on the record date for the Acquisition, the fair market value of the Shares (or other securities issuable upon exercise of this Warrant) is equal to or greater than three (3) times the Warrant Price, Company may require the Warrant to be deemed automatically exercised and the Holder shall participate in the Acquisition as a holder of the Shares (or other securities issuable upon exercise of the Warrant) on the same terms as other holders of the same class of securities of the Company. If the fair market value of the Shares (or other securities issuable upon exercise of this Warrant) is less than three (3) times the Warrant Price then the acquirer or successor entity shall assume the obligations of the Warrant in accordance with subsection (D) below. It is understood that, if in the event of an acquisition of the type referenced in this paragraph (C), the fair market value of the Shares is less than three (3) times the Warrant Price, Company or the acquirer may pay Holder, in cash, the difference between the actual fair market value at the time of such acquisition and an amount

equal to three (3) times the Warrant Price and upon receipt by Holder of such amount this Warrant shall be terminated.

(D) Upon the closing of any Acquisition other than those particularly described in subsections (A), (B), or (C) above, the successor entity shall assume the obligations of the Warrant, and the Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Shares shall be adjusted accordingly.

As used herein "Affiliate" shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the Shares payable in common stock, or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the Shares by reclassification or otherwise into a greater number of shares or takes any other action which increase the amount of stock into which the Shares are convertible, the number of shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation (as the same may be amended from time to time) upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this

Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant or, if the Shares are Preferred Stock, the number of shares of common stock issuable upon conversion of the Shares, shall be subject to adjustment, from time to time in the manner set forth in the Company's Certificate of Incorporation (as the same may be amended from time to time) as if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Shares in the Company's Certificate of Incorporation (as the same may be amended from time to time) relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than (i) the price per share at which the Shares were last issued in an arms-length transaction in which at least $500,000 of the Shares were sold and (ii) the fair market value of the Shares as of the date of this Warrant.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Capitalization Table previously provided to Holder remains true and complete as of the Issue Date.

3.2 Notice of Certain Events. Prior to the Initial Offering, if the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for sale any material amount of additional shares of any class or series of the Company's stock; (c) to effect any reclassification or recapitalization of any of its stock; (d) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; or (e) offer holders of registration rights the opportunity to participate in an underwritten public offering of the company's securities for cash, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of common stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (c) and (d) above; (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of common stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event); and (3) in the case of the matter referred to in (e) above, the same notice as is given to the holders of such registration rights.

3.3 Registration Under Act. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain incidental, or "Piggyback," registration rights pursuant to and as set forth in the Company's Amended and Restated Investor Rights Agreement dated August 15, 2002 (the "Piggyback Rights"). The Piggyback Rights may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects the Piggyback Rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the rights associated with all other shares of the same series and class as the Shares granted to the Holder.

3.4 Market Stand-Off Agreement. Holder shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any common stock (or other securities) of the Company held by Holder, for a period of time specified by the managing underwriter(s) (not to exceed one hundred eighty (180) days) following the effective date of a registration statement of the Company filed under the Act. Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to such common stock (or other securities) until the end of such period. The underwriters of the Company's stock are intended third party beneficiaries of

this Section 3.4 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

3.5 No Shareholder Rights. Except as provided in this Warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered un the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant, any successor warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant, any successor warrant, and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to Silicon Valley Bancshares (Holder's parent company) or any other affiliate of Holder. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144(d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. Upon receipt by Holder of the executed Warrant, Holder will transfer all of this Warrant to Silicon Valley Bancshares, Holder's parent company, by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing Company with written notice, Silicon Valley Bancshares and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Silicon Valley Bancshares or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may (or on the first business day after transmission by facsimile) be, in writing by the Company or such holder from time to time. Effective upon receipt of the fully executed Warrant and the initial transfer described in Article 5.4 above, all notices to the Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Silicon Valley Bancshares
Attn: Treasury Department
3003 Tasman Drive, HA 200
Santa Clara, CA 95054
Telephone: 408-654-7400
Facsimile: 408-496-2405

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

Threshold Pharmaceuticals, Inc.
Attn: _____
951 Gateway Boulevard
Suite 3A
South San Francisco, CA 94080

Telephone: 650.553.8915
Facsimile: _____

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorney's fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Exercise Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

"COMPANY"

THRESHOLD PHARMACEUTICALS, INC.

By: /s/ Harold E. Selick

Name: Harold E. Selick
(Print)
Title: Chief Executive Officer

By: /s/ Janet I. Swearson

Name: Janet I. Swearson
(Print)
Title: Chief Financial Officer

"HOLDER"

SILICON VALLEY BANK

Name: /s/ Peter Scott

(Print)
Title: SVP

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase _____ shares of the Common/Series _____ Preferred [strike one] Stock of Threshold Pharmaceuticals, Inc. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for _____ of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

_____
Holders Name

_____

_____
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX 2

ASSIGNMENT

For value received, Silicon Valley Bank hereby sells, assigns and transfers unto

Name: **Silicon Valley Bancshares**
Address: **3003 Tasman Drive (HA-200)**
Santa Clara, CA 95054

Tax ID: **91-1962278**

that certain Warrant to Purchase Stock issued by Threshold Pharmaceuticals, Inc. (the "Company"), on March 27, 2003 (the "Warrant") together with all rights, title and interest therein.

SILICON VALLEY BANK

By: _____

Name: _____

Title: _____

Date: March __, 2003

By its execution below, and for the benefit of the Company, Silicon Valley Bancshares makes each of the representations and warranties set forth in Article 4 of the Warrant as of the date hereof.

SILICON VALLEY BANCSHARES

By: _____

Name: _____

Title: _____

Exhibit 4.3

THRESHOLD PHARMACEUTICALS, INC.

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

November 17, 2003

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THRESHOLD PHARMACEUTICALS, INC.

SERIES B INVESTOR RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT (the "***Agreement***") is entered into as of the 17th day of November, 2003, by and among **THRESHOLD PHARMACEUTICALS, INC.**, a Delaware corporation (the "***Company***") and the investors listed on Exhibit A hereto, referred to hereinafter as the "Investors" and each individually as an "***Investor***."

RECITALS

WHEREAS, the certain of the Investors are purchasing shares of the Company's Series B Preferred Stock (the "***Series B Stock***"), pursuant to that certain Series B Preferred Stock Purchase Agreement (the "***Purchase Agreement***") of even date herewith (the "***Financing***");

WHEREAS, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement;

WHEREAS, certain of the Investors (the "***Prior Investors***") are holders of the Company's Series A Preferred Stock (the "Series A Stock," the Series A Stock and Series B Stock shall be referred to herein collectively as the "Preferred Stock");

WHEREAS, the Prior Investors and the Company are parties to an Amended and Restated Investor Rights Agreement dated August 15, 2002 (the "***Prior Agreement***");

WHEREAS, the parties to the Prior Agreement desire to amend and restate the Prior Agreement and accept the rights and covenants hereof in lieu of their rights and covenants under the Prior Agreement; and

WHEREAS, in connection with the consummation of the Financing, the Company and the Investors have agreed to the registration rights, information rights, and other rights as set forth below.

NOW, THEREFORE, in consideration of these premises and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. ***GENERAL***

1.1 Amendment and Restatement of Prior Agreement. The Prior Agreement is hereby amended in its entirety and restated herein. Such amendment and restatement is effective upon the execution of the Agreement by the Company and by the holders of a majority of the Series A Stock held by the Prior Investors outstanding as of the date of this Agreement. Upon such execution, all provisions of, rights granted and covenants made in the Prior Agreement are hereby waived, released and superseded in their entirety and shall have no further force or effect, including, without limitation, all rights of first refusal and any notice period associated therewith otherwise applicable to the transactions contemplated by the Purchase Agreement.

1.2 Definitions. As used in this Agreement the following terms shall have the following respective meanings:

(a) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(b) "***Form S-3***" means such form under the Securities Act as in effect on the date hereof or any successor or similar registration form under the Securities Act subsequently adopted by the SEC which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(c) "***Holder***" means any person owning of record Registrable Securities that have not been sold to the public or any assignee of record of such Registrable Securities in accordance with Section 2.10 hereof.

(d) "***Initial Offering***" means the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act.

(e) "***Major Investor***" has the meaning set forth in Section 3.1(c).

(f) "***Register,***" "***registered,***" and "***registration***" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) "***Registrable Securities***" means (a) Common Stock of the Company issued or issuable upon conversion of the Shares and (b) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities. Notwithstanding the foregoing, Registrable Securities shall not include any securities sold by a person to the public either pursuant to a registration statement or Rule 144 or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

(h) "***Registration Expenses***" shall mean all expenses incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, reasonable fees and disbursements not to exceed $25,000 of a single special counsel for the Holders, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company).

(i) "***SEC***" or "***Commission***" means the Securities and Exchange Commission.

(j) "***Securities Act***" shall mean the Securities Act of 1933, as amended.

(k) "***Selling Expenses***" shall mean all underwriting discounts and selling commissions applicable to the sale.

(l) "***Shares***" shall mean the Company's Series A Stock and Series B Stock held by the Investors listed on Exhibit A hereto and their permitted assigns.

(m) "***Special Registration Statement***" shall mean (i) a registration statement relating to any employee benefit plan or (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act, including any registration statements related to the resale of securities issued in such a transaction or (iii) a registration related to stock issued upon conversion of debt securities.

2. ***REGISTRATION; RESTRICTIONS ON TRANSFER.***

2.1 Restrictions on Transfer.

(a) Each Holder agrees not to make any disposition of all or any portion of the Shares or Registrable Securities unless and until:

(i) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) (A) The transferee has agreed in writing to be bound by the terms of this Agreement, (B) such Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (C) if reasonably requested by the Company, such Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144, except in unusual circumstances. After its Initial Offering, the Company will not require the transferee to be bound by the terms of this Agreement.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder that is (A) a partnership transferring to its partners, former partners or affiliates in accordance with partnership interests, (B) a corporation transferring to a wholly-owned subsidiary or a parent corporation that owns all of the capital stock of the Holder, (C) a limited liability company transferring to its members, former members or affiliates in accordance with their interest in the limited liability company, or (D) an individual transferring to the Holder's family member or trust for the benefit of an individual Holder; provided that in each case the transferee will be subject to the terms of this Agreement to the same extent as if he were an original Holder hereunder.

(b) Each certificate representing Shares or Registrable Securities shall (unless otherwise permitted by the provisions of the Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL

SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

(c) The Company shall be obligated to reissue promptly unlegended certificates at the request of any Holder thereof if the Holder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend.

(d) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

2.2 Demand Registration

(a) Subject to the conditions of this Section 2.2, if after the first anniversary of the closing of the Series B financing, the Company shall receive a written request from the Holders of 75% of the Registrable Securities (the "***Initiating Holders***") that the Company file a registration statement under the Securities Act covering the registration of at least a majority of the Registrable Securities then outstanding (a "***Qualified Public Offering***"), then the Company shall, within 30 days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 2.2, effect, as expeditiously as reasonably possible, the registration under the Securities Act of all Registrable Securities that the Holders request to be registered.

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 2.2 or any request pursuant to Section 2.4 and the Company shall include such information in the written notice referred to in Section 2.2(a) or Section 2.4(a), as applicable. In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 2.2 or Section 2.4, if the underwriter advises the Company that marketing factors require a limitation of the number of securities to be underwritten (including Registrable Securities) then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a pro rata basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders). Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 2.2:

(i) prior to 180 days following the effective date of the registration statement pertaining to the Initial Offering;

(ii) after the Company has effected two registrations pursuant to this Section 2.2, and such registrations have been declared or ordered effective;

(iii) during the period starting with the date of filing of, and ending on the date 180 days following the effective date of the registration statement pertaining to a public offering, other than pursuant to a Special Registration Statement; provided that the Company makes reasonable good faith efforts to cause such registration statement to become effective;

(iv) if within 30 days of receipt of a written request from Initiating Holders pursuant to Section 2.2(a), the Company gives notice to the Holders of the Company's intention to file a registration statement for a public offering, other than pursuant to a Special Registration Statement within 90 days;

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.2, a certificate signed by the Chairman of the Board stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than 120 days after receipt of the request of the Initiating Holders; provided that such right to delay a request shall be exercised by the Company not more than once in any twelve month period;

(vi) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.4 below;

(vii) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance; or

(viii) if the registration would result in an offering with total proceeds of less than $50,000,000.

2.3 Piggyback Registrations. The Company shall notify all Holders of Registrable Securities in writing at least 15 days prior to the filing of any registration statement under the Securities Act for purposes of a public offering of securities of the Company (including, but not limited to, registration statements relating to secondary offerings of securities of the Company, but excluding Special Registration Statements) and will afford each such Holder an opportunity to include in such registration statement all or part of such Registrable Securities held by such Holder. Each Holder desiring to include in any such registration statement all or any part of the Registrable Securities held by it shall, within 15 days after the above-described notice from the Company, so notify the Company in writing. Such notice shall state the intended method of disposition of the Registrable Securities by such Holder. If

a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(a) ***Underwriting***. If the registration statement under which the Company gives notice under this Section 2.3 is for an underwritten offering, the Company shall so advise the Holders of Registrable Securities. In such event, the right of any such Holder to be included in a registration pursuant to this Section 2.3 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Agreement, if the underwriter determines in good faith that marketing factors require a limitation of the number of shares to be underwritten, the number of shares that may be included in the underwriting shall be allocated, first, to the Company; second, to the Holders on a pro rata basis based on the total number of Registrable Securities held by the Holders; and third, subject to Section 2.3(b), to any stockholder of the Company (other than a Holder) on a pro rata basis; provided, however that, unless the registration is with respect to the Company's initial public offering, in no event shall the shares to be sold by the Holders be reduced below 30% of the total amount of securities included in the registration. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least ten business days prior to the effective date of the registration statement. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration. For any Holder which is a partnership or corporation, the partners, retired partners and shareholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing person shall be deemed to be a single "***Holder,***" and any pro rata reduction with respect to such "***Holder***" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "***Holder***," as defined in this sentence.

(b) No stockholder of the Company shall be granted piggyback registration rights which would reduce the number of shares includable by the holders of the Registrable Securities in such registration without the written consent of the holders of at least two-thirds of the Registrable Securities.

(c) ***Right to Terminate Registration***. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof.

2.4 Form S-3 Registration. In case the Company shall receive from any Holder or Holders of Registrable Securities a written request or requests that the Company effect a registration on Form S-3 (or any successor to Form S-3) or any similar short-form registration statement and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders of Registrable Securities; and

(b) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within 15 days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 2.4:

(i) if Form S-3 is not available for such offering by the Holders, or

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than $1,000,000, or

(iii) if within 30 days of receipt of a written request from any Holder or Holders pursuant to this Section 2.4, the Company gives notice to such Holder or Holders of the Company's intention to make a public offering within 90 days, other than pursuant to a Special Registration Statement provided that such Holders were permitted to register such shares as requested to be registered pursuant to Section 2.3 hereof; or

(iv) if the Company shall furnish to the Holders a certificate signed by the Chairman of the Board of Directors of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such Form S-3 registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than 120 days after receipt of the request of the Holder or Holders under this Section 2.4; provided, that such right to delay a request shall be exercised by the Company not more than once in any twelve month period, or

(v) if the Company has, within the twelve month period preceding the date of such request, already effected two registrations on Form S-3 for the Holders pursuant to this Section 2.4, or

(vi) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) Subject to the foregoing, the Company shall file a Form S-3 registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the requests of the Holders. Registrations effected pursuant to this Section 2.4 shall not be counted as demands for registration or registrations effected pursuant to Sections 2.2 or 2.3, respectively. All Registration Expenses incurred in connection with registrations requested pursuant to this Section 2.4 after the first two registrations shall be paid by the selling Holders pro rata in proportion to the number of shares sold by each such Holder.

2.5 Expenses of Registration. Except as specifically provided herein, all Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to Section 2.2 or any registration under Section 2.3 or Section 2.4 herein shall be borne by the Company**,** including the expenses of one special counsel of the selling Holders not to exceed $25,000 per registration. All Selling Expenses incurred in connection with any registrations hereunder, shall be borne by the holders of the securities so registered pro rata on the basis of the number of shares so registered. The Company shall not, however, be required to pay for expenses of any registration proceeding begun pursuant to Section 2.2 or 2.4, the request of which has been subsequently withdrawn by the Initiating Holders unless (a) the withdrawal is based upon material adverse information concerning the Company of which the Initiating Holders were not aware at the time of such request or (b) the Holders of a majority of Registrable Securities agree to forfeit their right to one demand registration pursuant to Section 2.2 or Section 2.4, as applicable, in which event such right shall be forfeited by all Holders). If the Holders are required to pay the Registration Expenses, such expenses shall be borne by the holders of securities (including Registrable Securities) requesting such registration in proportion to the number of shares for which registration was requested. If the Company is required to pay the Registration Expenses of a withdrawn offering pursuant to clause (a) above, then the Holders shall not forfeit their rights pursuant to Section 2.2 or Section 2.4 to a demand registration.

2.6 Obligations of the Company. Whenever required to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for up to 30 days or, if earlier, until the Holder or Holders have completed the distribution related thereto; provided, however, that at any time, upon written notice to the participating Holders and for a period not to exceed 120 days thereafter (the "***Suspension Period***"), the Company may delay the filing or effectiveness of any registration statement or suspend the use or effectiveness of any registration statement (and the Initiating Holders hereby agree not to offer or sell any Registrable Securities pursuant to such registration statement during the Suspension Period) if the Company reasonably believes that the Company may, in the absence of such delay or suspension hereunder, be required under state or federal securities laws to disclose any corporate development the disclosure of which could reasonably be expected to have an adverse effect upon the Company, its stockholders, a potentially significant transaction or event involving the Company, or any negotiations, discussions, or proposals directly relating thereto. No more than one such Suspension Periods shall occur in any twelve (12) month period. In the event that the Company shall exercise its rights hereunder, the applicable time period during which the registration statement is to remain effective shall be extended by a period of time equal to the duration of the Suspension Period. The Company may extend the Suspension Period for an additional consecutive 120 days with the consent of the holders of a majority of the Registrable Securities proposed to be sold by the Initiating Holders, which consent shall not be unreasonably withheld. If so directed by the Company, the Initiating Holders shall use their best efforts to deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Initiating Holders' possession, of the prospectus relating to such Registrable Securities current at the time of receipt of such notice. The Company shall not be required to file, cause to become effective or maintain the

effectiveness of any registration statement that contemplates a distribution of securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in paragraph (a) above.

(c) Furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing. The Company will use reasonable efforts to amend or supplement such prospectus in order to cause such prospectus not to include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Use its reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter, dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters.

2.7 Termination of Registration Rights. All registration rights granted under this Section 2 shall terminate and be of no further force and effect five years after the date of the Company's Initial Offering. In addition, a Holder's registration rights shall expire if (a) the Company has completed its Initial Offering and is subject to the provisions of the Exchange Act, (b) such Holder (together with its affiliates) holds less than 1% of the Company's

outstanding Common Stock (treating all shares of convertible Preferred Stock on an as converted basis) and (c) all Registrable Securities held by and issuable to such Holder (and its affiliates) may be sold under Rule 144 during any 90 day period.

2.8 Delay of Registration; Furnishing Information.

(a) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

(b) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 2.2, 2.3 or 2.4 that the selling Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registration of their Registrable Securities.

(c) The Company shall have no obligation with respect to any registration requested pursuant to Section 2.2 or Section 2.4 if, due to the operation of subsection 2.2(b), the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in Section 2.2 or Section 2.4, whichever is applicable.

2.9 Indemnification. In the event any Registrable Securities are included in a registration statement under Sections 2.2, 2.3 or 2.4:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers and directors of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "***Violation***") by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law in connection with the offering covered by such registration statement; and the Company will pay as incurred to each such Holder, partner, officer, director, underwriter or controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided however, that the indemnity agreement contained in this Section 2.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation

which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Holder, partner, officer, director, underwriter or controlling person of such Holder.

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration qualifications or compliance is being effected, indemnify and hold harmless the Company, each of its directors, its officers and each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter and any other Holder selling securities under such registration statement or any of such other Holder's partners, directors or officers or any person who controls such Holder, against any losses, claims, damages or liabilities (joint or several) to which the Company or any such director, officer, controlling person, underwriter or other such Holder, or partner, director, officer or controlling person of such other Holder may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder under an instrument duly executed by such Holder and stated to be specifically for use in connection with such registration; and each such Holder will pay as incurred any legal or other expenses reasonably incurred by the Company or any such director, officer, controlling person, underwriter or other Holder, or partner, officer, director or controlling person of such other Holder in connection with investigating or defending any such loss, claim, damage, liability or action if it is judicially determined that there was such a Violation; provided, however, that the indemnity agreement contained in this Section 2.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided further, that in no event shall any indemnity under this Section 2.9 exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.9.

(d) If the indemnification provided for in this Section 2.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of

indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

(e) The obligations of the Company and Holders under this Section 2.9 shall survive completion of any offering of Registrable Securities in a registration statement and the termination of this Agreement. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

2.10 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities that (a) is a parent, general partner, limited partner, retired partner of a Holder that is a partnership, (b) a member or retired member, of a Holder that is a limited liability company, (c) is a Holder's family member or trust for the benefit of an individual Holder or such Holder's family member, (d) is an affiliate of an Investor, or (e) acquires at least 250,000 shares of Registrable Securities (as adjusted for stock splits and combinations); provided, however, (i) the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned, (ii) such transferee shall agree to be subject to all restrictions set forth in this Agreement, and (iii) such transfer is in accordance with all applicable securities laws.

2.11 Amendment of Registration Rights. Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of at least 75% of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 2.11 shall be binding upon each Holder and the Company. By acceptance of any benefits under this Section 2, Holders of Registrable Securities hereby agree to be bound by the provisions hereunder.

2.12 Limitation on Subsequent Registration Rights. Other than as provided in Section 5.11, after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of at least 75% of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder registration rights senior to those granted to the Holders hereunder, other than the right to a Special Registration Statement.

2.13 "Market Stand-Off" Agreement. Each Holder hereby agrees that such Holder shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act; provided that all of the Company's officers, directors and stockholders holding more than 1% of the outstanding shares of Common Stock (including Preferred Stock on an as converted basis) enter or have entered into similar agreements, and provided that if the Company or underwriters waive or shorten the lock-up period for any of the Company's officers, directors or stockholders holding more than 1% of the outstanding shares of Common Stock, then the lock-up for each Holder will also be identically waived or shortened.

2.14 Agreement to Furnish Information. Each Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter that are consistent with the Holder's obligations under Section 2.13 or that are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, each Holder shall provide, within ten days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in Section 2.13 and this Section 2.14 shall not apply to a Special Registration. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said 180 day period. Each Holder agrees that any transferee of any shares of Registrable Securities shall be bound by Sections 2.13 and 2.14. The underwriters of the Company's stock are intended third party beneficiaries of Sections 2.13 and 2.14 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

2.15 Rule 144 Reporting. With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in SEC Rule 144 or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of the first registration filed by the Company for an offering of its securities to the general public;

(b) File with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(c) So long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 of the Securities Act, and of the Exchange Act (at any time after it has become subject to such reporting requirements); a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as a

Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

3. ***COVENANTS OF THE COMPANY.***

3.1 Basic Financial Information and Reporting.

(a) The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

(b) As soon as practicable after the end of each fiscal year of the Company, and in any event within 120 days thereafter, the Company will furnish each Investor a balance sheet of the Company, as at the end of such fiscal year, and a statement of income and a statement of cash flows of the Company, for such year, all prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by the Company's Board of Directors.

(c) So long as an Investor (with its affiliates) shall own not less than 500,000 shares of Registrable Securities (as adjusted for stock splits and combinations) (a "***Major Investor***"), to the extent requested by such Major Investor the Company will furnish each such Major Investor, as soon as practicable (i) after the end of each month, unaudited monthly financial statements of the Company prepared in accordance with generally accepted accounting principles consistently applied (except as noted thereon), and (ii) after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, unaudited quarterly financial statements prepared in accordance with generally accepted accounting principles consistently applied (except as noted thereon).

3.2 Inspection Rights. Each Major Investor shall have the right to visit and inspect any of the properties of the Company or any of its subsidiaries, and to discuss the affairs, finances and accounts of the Company or any of its subsidiaries with its officers, and to review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested; provided, however, that the Company shall not be obligated under this Section 3.2 with respect to a competitor of the Company or with respect to information which the Board of Directors determines in good faith is confidential and should not, therefore, be disclosed.

3.3 Confidentiality of Records. Each Investor agrees to use, and to use its best efforts to insure that its authorized representatives use, the same degree of care as such Investor uses to protect its own confidential information to keep confidential any information furnished to it which the Company identifies as being confidential or proprietary (so long as such information is not in the public domain), except that such Investor may disclose such proprietary or confidential information (i) to any partner, subsidiary or parent of such Investor for the purpose of evaluating its investment in the Company as long as such partner, subsidiary or parent is advised of the confidentiality provisions of this Section 3.3; (ii) at such

time as it enters the public domain through no fault of such Investor; (iii) that is communicated to it free of any obligation of confidentiality by a third party with rights to do so; or (iv) that is developed by Investor or its agents independently of and without reference to any confidential information communicated by the Company.

3.4 Reservation of Common Stock. The Company will at all times reserve and keep available, solely for issuance and delivery upon the conversion of the Preferred Stock, all Common Stock issuable from time to time upon such conversion.

3.5 Proprietary Information and Inventions Agreement. The Company shall require all employees and consultants to execute and deliver a Proprietary Information and Inventions Agreement substantially in the form attached to the Purchase Agreement.

3.6 Stock Vesting. Unless otherwise approved by the Board of Directors, all stock options and other stock equivalents issued after the date of this Agreement to employees, directors, consultants and other service providers shall be subject to vesting as follows: (a) twenty-five percent (25%) of such stock shall vest at the end of the first year following either the date of issuance or the date of such person's services commencement date with the company, and (b) seventy-five percent (75%) of such stock shall vest over the remaining three (3) years. With respect to any shares of stock purchased by any such person, the Company's repurchase option shall provide that upon such person's termination of employment or service with the Company, with or without cause, the Company or its assignee shall have the option to purchase at cost any unvested shares of stock held by such person.

3.7 Key Man Insurance. The Company will use its best efforts to obtain and maintain in full force and effect term life insurance in the amount of two million ($2,000,000) dollars on the lives of each of the Company's Chief Executive Officer and George Tidmarsh; naming the Company as beneficiary.

3.8 Directors' Liability and Indemnification; D & O Insurance. The Company's Certificate of Incorporation and Bylaws shall provide (a) for elimination of the liability of director to the maximum extent permitted by law and (b) for indemnification of directors for acts on behalf of the Company to the maximum extent permitted by law. The Company will use its best efforts to obtain and maintain in full force and effect directors and officers insurance for each of the directors and officers in the amount of three million ($3,000,000) dollars or such higher amount that is approved by the Board.

3.9 Assignment of Right of First Refusal. In the event the Company elects not to exercise any right of first refusal or right of first offer the Company may have on a proposed transfer of any of the Company's outstanding capital stock pursuant to the Company's charter documents, by contract or otherwise, the Company shall, to the extent if may do so, assign such right of first refusal or right of first offer to each Investor. In the event of such assignment, each Investor shall have a right to purchase its pro rata portion of the capital stock proposed to be transferred. Each Investor's pro rata portion shall be equal to the product obtained by multiplying (i) the aggregate number of shares proposed to be transferred by (ii) a fraction, the numerator of which is the number of shares of Registrable Securities held by such Investor at the time of the proposed transfer and the denominator of which is the total number of Registrable Securities owned by all Investors at the time of such proposed transfer.

3.10 Expenses of Non-employee Directors and Board Observers. The reasonable out of pocket expenses incurred by non-employee directors and permitted observers attending meetings pursuant to rights granted pursuant to Section 3.11, in attending meetings of the Board and other meetings or events on behalf of the Company, shall be reimbursed by the Company.

3.11 Visitation Rights. The Company shall allow one representative designated by any Major Investor not represented by a member of the Board of Directors to attend all meetings of the Company's Board of Directors in a nonvoting capacity, and in connection therewith, the Company shall give such representative copies of all notices, minutes, consents and other materials, financial or otherwise, which the Company provides to its Board of Directors; provided, however, that the Company reserves the right to exclude such representative from access to any material or meeting or portion thereof if the Company believes upon advice of counsel that such exclusion is reasonably necessary to preserve the attorney-client privilege or to protect highly confidential information or for other similar reasons. The decision of the Board with respect to the privileged or confidential nature of such information shall be final and binding.

3.12 Restrictions on Operations. The Company shall obtain the approval of the Board of Directors prior to entering into any business arrangements with a value exceeding $250,000, or such other amount as may be later determined by a majority of the Board of Directors.

3.13 Termination of Covenants. All covenants of the Company contained in Section 3 of this Agreement (except Sections 3.3, 3.8 and 3.9) shall expire and terminate as to each Investor upon the earlier of (i) the effective date of the registration statement pertaining to the Initial Offering or (ii) upon (a) the sale, lease or other disposition of all or substantially all of the assets of the Company or (b) an acquisition of the Company by another corporation or entity by consolidation, merger or other reorganization in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction (a "Change in Control"), provided that this Section 3.13(ii)(b) shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company.

4. RIGHTS OF FIRST REFUSAL Subsequent Offerings. Each Major Investor shall have a right of first refusal to purchase its pro rata share of all Equity Securities, as defined below, that the Company may, from time to time, propose to sell and issue after the date of this Agreement, other than the Equity Securities excluded by Section 4.6 hereof. Each Investor's pro rata share is equal to the ratio of (a) the number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares) which such Investor is deemed to be a holder immediately prior to the issuance of such Equity Securities to (b) the total number of shares of the Company's outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares or upon the exercise of any outstanding warrants or options) immediately prior to the issuance of the Equity Securities. The term "***Equity Securities***" shall mean (i) any Common Stock, Preferred Stock or other security of the Company, (ii) any security convertible, with or without consideration, into any Common Stock, Preferred Stock or other security (including any option to purchase such a convertible security), (iii) any security

carrying any warrant or right to subscribe to or purchase any Common Stock, Preferred Stock or other security or (iv) any such warrant or right.

4.2 Exercise of Rights. If the Company proposes to issue any Equity Securities, it shall give each Major Investor written notice of its intention, describing the Equity Securities, the price and the terms and conditions upon which the Company proposes to issue the same. Each Major Investor shall have 15 days from the giving of such notice to agree to purchase its pro rata share of the Equity Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased. Notwithstanding the foregoing, the Company shall not be required to offer or sell such Equity Securities to any Major Investor who would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale.

4.3 Issuance of Equity Securities to Other Persons. If not all of the Major Investors elect to purchase their *pro rata* share of the Equity Securities, then the Company shall promptly notify in writing the Major Investors who do so elect and shall offer such Investors the right to acquire such unsubscribed shares. The Major Investors shall have five (5) days after receipt of such notice to notify the Company of its election to purchase all or a portion thereof of the unsubscribed shares. If the Major Investors fail to exercise in full the rights of first refusal, the Company shall have 120 days thereafter to sell the Equity Securities in respect of which the Major Investor's rights were not exercised, at a price and upon general terms and conditions materially no more favorable to the purchasers thereof than specified in the Company's notice to the Major Investors pursuant to Section 4.2 hereof. If the Company has not sold such Equity Securities within 90 days of the notice provided pursuant to Section 4.2, the Company shall not thereafter issue or sell any Equity Securities, without first offering such securities to the Major Investors in the manner provided above.

4.4 Termination and Waiver of Rights of First Refusal. The rights of first refusal established by this Section 4 shall not apply to, and shall terminate upon the earlier of (i) the effective date of the registration statement pertaining to the Company's Initial Offering or (ii) a Change in Control. The rights of first refusal established by this Section 4 may be amended, or any provision waived with the written consent of Major Investors holding 75% of the Registrable Securities held by all Major Investors, or as permitted by Section 5.6.

4.5 Transfer of Rights of First Refusal. The rights of first refusal of each Major Investor under this Section 4 may be transferred to the same parties, subject to the same restrictions as any transfer of registration rights pursuant to Section 2.10.

4.6 Excluded Securities. The rights of first refusal established by this Section 4 shall have no application to any of the following Equity Securities:

(a) shares of Common Stock and/or options, warrants or other Common Stock purchase rights and the Common Stock issued pursuant to such options, warrants or other rights issued or to be issued after the Original Issue Date (as defined in the Company's Certificate of Incorporation) to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors; provided, however, that such amount shall be increased to reflect any shares of Common Stock (i) not issued pursuant to the rights, agreements, options or warrants outstanding as of the Original Issue Date

("***Outstanding Options***") as a result of the termination of such Outstanding Options or (ii) reacquired by the Company from employees, directors or consultants at cost pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company;

(b) stock issued or issuable pursuant to any rights or agreements outstanding or approved by the Board of Directors as of the date of this Agreement, options and warrants outstanding as of the date of this Agreement; and stock issued pursuant to any such rights or agreements granted after the date of this Agreement; provided that the rights of first refusal established by this Section 4 applied with respect to the initial sale or grant by the Company of such rights or agreements;

(c) any Equity Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board of Directors;

(d) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization by the Company;

(e) shares of Common Stock issued upon conversion of shares of the Company's Preferred Stock;

(f) any Equity Securities issued pursuant to any equipment leasing, real property leasing or loan arrangement, or debt financing from a bank or similar financial or lending institution approved by the Board of Directors;

(g) any Equity Securities issued in connection with strategic transactions involving the Company and other entities, including (i) strategic alliance, joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements approved by the Board of Directors including the affirmative vote of at least two (2) representatives designated by the Preferred Stock; and

(h) any Equity Securities that are issued by the Company pursuant to a registration statement filed under the Securities Act.

5. ***MISCELLANEOUS***

5.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California.

5.2 Survival. The representations, warranties, covenants, and agreements made herein shall survive any investigation made by any Holder and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument.

5.3 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto and shall inure to the benefit of and

be enforceable by each person who shall be a holder of Registrable Securities from time to time; provided, however, that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends or any redemption price.

5.4 Entire Agreement. This Agreement, the Exhibits and Schedules hereto, the Purchase Agreement and the other documents delivered pursuant thereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

5.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6. ***AMENDMENT AND WAIVER***

(a) Except as otherwise expressly provided, this Agreement may be amended or modified only upon the written consent of the Company and the holders of at least 75% of the Registrable Securities.

(b) Except as otherwise expressly provided, the obligations of the Company and the rights of the Holders under this Agreement may be waived only with the written consent of the holders of at least 75% of the Registrable Securities.

(c) For the purposes of determining the number of Holder or Investors entitled to vote or exercise any rights hereunder, the Company shall be entitled to rely solely on the list of record holders of its stock as maintained by or on behalf of the Company, provided that the Company make reasonably diligent efforts to maintain an accurate updated list of record holders of its stock.

6.2 Delays or Omissions.

(a) It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Holder's part of any breach, default or noncompliance under the Agreement or any waiver on such Holder's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

(b) It is agreed that no delay or omission to exercise any right, power, or remedy accruing to the Company, upon any breach, default or noncompliance of the Holder under

this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Company's part of any breach, default or noncompliance under the Agreement or any waiver on such Holder's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Company, shall be cumulative and not alternative

6.3 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth on the signature pages hereof or Exhibit A hereto or at such other address or electronic mail address as such party may designate by ten days advance written notice to the other parties hereto.

6.4 Attorneys' Fees. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

6.5 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

6.6 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of its Preferred Stock pursuant to the Purchase Agreement, any purchaser of such shares of Preferred Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "***Investor,***" a "***Holder***" and a party hereunder. Notwithstanding anything to the contrary contained herein, if the Company shall issue Equity Securities in accordance with Section 4.6 (c), (f) or (h) of this Agreement, any purchaser of such Equity Securities may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "***Investor,***" a "***Holder***" and a party hereunder.

6.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

6.8 Aggregation of Stock. All shares of Registrable Securities held or acquired by affiliated entities or persons or persons or entities under common management or control shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

In Witness Whereof, the parties hereto have executed this Amended and Restated Investor Rights Agreement as of the date set forth in the first paragraph hereof.

COMPANY:

THRESHOLD PHARMACEUTICALS, INC.

By: /s/ Harold E. Selick

Harold E. Selick,
Chief Executive Officer

INVESTORS:

MORGENTHALER PARTNERS VII, L.P.
By: Morgenthaler Management Partners VII, LLC, Its Managing Partner

By: /s/ Robert C. Bellas, Jr.

Robert C. Bellas, Jr.,
Managing Member

INVESTORS:

CHL MEDICAL PARTNERS II, L.P.
By: Collinson Howe & Lennox II, LLC,
its General Partner

By: /s/ Ronald W. Lennox

Name: Ronald W. Lennox
Title:

CHL MEDICAL PARTNERS II SIDE FUND, L.P.
By: Collinson Howe & Lennox II, LLC,
its General Partner

By: /s/ Ronald W. Lennox

Name: Ronald W. Lennox
Title:

INVESTORS:

PEQUOT PRIVATE EQUITY FUND III, L.P.
By: Pequot Capital Management, Inc.;
its Investment Manager

By: /s/ Richard Joslin

Richard Joslin, Principal

PEQUOT OFFSHORE PRIVATE EQUITY
PARTNERS III, L.P.
By: Pequot Capital Management, Inc.;
its Investment Manager

By: /s/ Richard Joslin

Richard Joslin, Principal

INVESTORS:

THREE ARCH ASSOCIATES III, L.P.
By: Three Arch Management III, L.L.C.
its General Partner

By: /s/ Wilfred Jaeger

Name: Wilfred Jaeger
Title: Managing Member

THREE ARCH PARTNERS III, L.P.
By: Three Arch Management III, L.L.C.
its General Partner

By: /s/ Wilfred Jaeger

Name: Wilfred Jaeger
Title: Managing Member

INVESTORS:

SOFINNOVA VENTURE PARTNERS V, LP
By: Sofinnova Management V, LLC,
General Partner

By: /s/ Mike Powell

Mike Powell,
Managing Director

SOFINNOVA AFFILIATES V, LP
By: Sofinnova Management V, LLC,
General Partner

By: /s/ Mike Powell

Mike Powell
Managing Director

SOFINNOVA PRINCIPALS FUND V, LP
By: Sofinnova Management V, LLC
General Partner

By: /s/ Mike Powell

Mike Powell,
Managing Director

INVESTORS:

PROQUEST INVESTMENTS II, L.P.

By: /s/ Pasquale DeAngelis

Pasquale DeAngelis,
Chief Financial Officer

PROQUEST INVESTMENTS II ADVISORS

By: /s/ Pasquale DeAngelis

Pasquale DeAngelis,
Chief Financial Officer

INVESTORS:

SUTTER HILL VENTURES,
A CALIFORNIA LIMITED PARTNERSHIP

By: /s/ Jeffrey W. Bird

Name: Jeffrey W. Bird
Managing Director of the General Partner

SUTTER HILL ENTREPRENEURS FUND (AI) L.P.

By: /s/ Jeffrey W. Bird

Name: Jeffrey W. Bird
Managing Director of the General Partner

SUTTER HILL ENTREPRENEURS FUND (QP) L.P.

By: /s/ Jeffrey W. Bird

Name: Jeffrey W. Bird
Managing Director of the General Partner

ANVEST, L.P.

By: /s/ David L. Anderson

David L. Anderson, General Partner

G. LEONARD BAKER, JR. AND MARY ANNE BAKER, CO-TRUSTEES OF THE BAKER REVOCABLE TRUST U/A/D 2/3/03

By: /s/ David E. Sweet - Under Power of Attorney

G. Leonard Baker, Trustee

SAUNDERS HOLDINGS, L.P.

By: /s/ David E. Sweet - Under Power of Attorney

G. Leonard Baker, Trustee

WILLIAM H. YOUNGER, JR., TRUSTEE THE YOUNGER LIVING TRUST U/A/D 1/20/95

By: /s/ William H. Younger, Jr.

William H. Younger, Jr., Trustee

TENCH COXE AND SIMONE OTUS, CO-TRUSTEES OF THE COXE/OTUS REVOCABLE TRUST U/A/D 4/23/98

By: /s/ Tench Coxe

Tench Coxe, Trustee

GREGORY P. SANDS AND SARAH J.D. SANDS AS TRUSTEES OF THE GREGORY P. AND SARAH J.D. SANDS TRUST AGREEMENT DATED 2/24/99

By: /s/ Gregory P. Sands

Gregory P. Sands, Trustees

/s/ David E. Sweet - Under Power of Attorney

James C. Gaither

JAMES N. WHITE AND PATRICIA A. O'BRIEN AS TRUSTEES OF THE WHITE FAMILY TRUST U/A/D 4/3/97

By: /s/ James N. White

James N. White, Trustee

JEFFREY W. BIRD AND CHRISTINA R. BIRD AS TRUSTEES OF JEFFREY W. AND CHRISTINA R. BIRD TRUST AGREEMENT DATED 10/31/00

By: /s/ Jeffery W. Bird

Jeffrey W. Bird, Trustee

RONALD DANIEL BERNAL AND PAMELA MAYER BERNAL AS TRUSTEES OF BERNAL FAMILY TRUST U/D/T 11/3/95

By: /s/ David E. Sweet - Under Power of Attorney

Ronald D. Bernal, Trustee

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
SHERRYL W. HOSSACK

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
DAVID E. SWEET (ROLLOVER)

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
LYNNE M. BROWN

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
PATRICIA TOM

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
ROBERT YIN

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
DAVID L. ANDERSON

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

WELLS FARGO BANK, TRUSTEE
SHV PROFIT SHARING PLAN FBO
JAMES N. WHITE

By: /s/ Vicki M. Bandel

Name: Vicki M. Bandel
Title: Assistant Vice President Trust Officer

SCHEDULE OF INVESTORS

Name And Address	Shares of Series B Preferred Stock	Shares of Series A Preferred Stock
MORGENTHALER PARTNERS VII, L.P. 2710 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Attn: Robert C. Bellas, Jr.	5,454,545	
CHL MEDICAL PARTNERS II, L.P. Collinson Howe & Lennox, LLC 1055 Washington Boulevard, 6th Floor Stamford, CT 06901 Attn: Ron Lennox	1,703,409	
CHL MEDICAL PARTNERS II SIDE FUND, L.P. Collinson Howe & Lennox, LLC 1055 Washington Boulevard, 6th Floor Stamford, CT 06901 Attn: Ron Lennox	114,773	
PEQUOT PRIVATE EQUITY FUND III, L.P. Pequot Ventures 500 Nyala Farm Road Westport, CT 06880 Attn: Aryeh Davis and Carlos Rodrigues	4,780,631	
PEQUOT OFFSHORE PRIVATE EQUITY PARTNERS III, L.P. Pequot Ventures 500 Nyala Farm Road Westport, CT 06880 Attn: Aryeh Davis and Carlos Rodrigues	673,914	
THREE ARCH PARTNERS III, L.P. 3200 Alpine Road Portola Valley, CA 94028 Attn: Barclay Nicholson	2,875,696	2,135,250
THREE ARCH ASSOCIATES III, L.P. 3200 Alpine Road Portola Valley, CA 94028 Attn: Barclay Nicholson	154,607	114,750

Name And Address	Shares of Series B Preferred Stock	Shares of Series A Preferred Stock
Sofinnova Venture Partners V, LP c/o Sofinnova Ventures, Inc. 140 Geary Street, Tenth Floor San Francisco, CA 94018 Attn: Mike Powell	2,890,866	2,146,467
Sofinnova Affiliates V, LP c/o Sofinnova Ventures, Inc. 140 Geary Street, Tenth Floor San Francisco, CA 94018 Attn: Mike Powell	95,111	70,620
Sofinnova Principals Fund V, LP c/o Sofinnova Ventures, Inc. 140 Geary Street, Tenth Floor San Francisco, CA 94018 Attn: Mike Powell	44,326	32,913
ProQuest Investments II, L.P. 600 Alexander Park, Suite 204 Princeton, NJ 08540 Attn: Pasquale DeAngelis	2,908,182	2,159,325
ProQuest Investments II Advisors Fund, L.P. 600 Alexander Park, Suite 204 Princeton, NJ 08540 Attn: Pasquale DeAngelis	122,121	90,675
Sutter Hill Ventures, a California Limited Partnership 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	2,066,242	1,571,434
Sutter Hill Entrepreneurs Fund (AI) L.P. 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	20,932	15,542
Sutter Hill Entrepreneurs Fund (QP) L.P. 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	53,001	39,353

Name And Address	Shares of Series B Preferred Stock	Shares of Series A Preferred Stock
ANVEST, L.P. 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	36,505	27,105
G. LEONARD BAKER, JR. AND MARY ANNE BAKER, CO-TRUSTEES OF THE BAKER REVOCABLE TRUST U/A/D 2/3/03 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	67,492	37,947
SAUNDERS HOLDINGS, L.P. 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	51,107	37,947
WILLIAM H. YOUNGER, JR., TRUSTEE THE YOUNGER LIVING TRUST U/A/D 1/20/95 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	175,227	130,106
TENCH COXE AND SIMONE OTUS, CO-TRUSTEES OF THE COXE/OTUS LREVOCABLE TRUST U/A/D/ 4/23/98 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	248,241	184,319
GREGORY P. SANDS AND SARAH J.D. SANDS AS TRUSTEES OF GREGORY P. AND SARAH J.D. SANDS TRUST AGREEMENT 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	37,055	32,526
JAMES C. GAITHER 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	37,055	32,526

Name And Address	Shares of Series B Preferred Stock	Shares of Series A Preferred Stock
James N. White and Patricia A. O'Brien as Trustees of the White Family Trust u/a/d 4/3/97 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	25,176	
Jeffrey W. Bird and Christina R. Bird as Trustees of Jeffrey W. and Christina Bird Trust Agreement Dated 10/31/00 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	34,716	22,500
Ronald Daniel Bernal and Pamela Mayer Bernal as Trustees of Bernal Family Trust u/d/t 11/3/95 755 Page Mill Road Suite A-200 Palo Alto, CA 94304	30,303	22,500
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO Sherryl W. Hossack Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	7,576	5,625
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO David E. Sweet (Rollover) Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	30,303	11,250
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO Lynne M. Brown Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	3,788	2,813

Name And Address	Shares of Series B Preferred Stock	Shares of Series A Preferred Stock
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO Patricia Tom Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	3,788	2,813
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO Robert Yin Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	3,788	2,813
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO David L. Anderson Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	70,288	27,105
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO James N. White Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	18,630	32,526
Wells Fargo Bank, Trustee SHV Profit Sharing Plan FBO Jeffrey W. Bird Attn: Vicki Bandel Wells Fargo Bank 420 Montgomery St, 2nd Floor San Francisco, CA 94104	9,090	
David E. Sweet 755 Page Mill Road Suite A-200 Palo Alto, CA 94304		11,250
Total:	24,848,484	9,000,000

THRESHOLD PHARMACEUTICALS, INC.

2001 EQUITY INCENTIVE PLAN

Adopted: December 3, 2001
Approved By Stockholders: December 3, 2001
Termination Date: December 2, 2011
As Amended August 6, 2002 And Approved By Stockholders August 15, 2002
As Amended June 24, 2003
As Amended November 14, 2003

1. PURPOSES.

(a) **Eligible Stock Award Recipients**. The persons eligible to receive Stock Awards are the Employees, Directors and Consultants of the Company and its Affiliates.

(b) **Available Stock Awards**. The purpose of the Plan is to provide a means by which eligible recipients of Stock Awards may be given an opportunity to benefit from increases in value of the Common Stock through the granting of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) stock bonuses and (iv) rights to acquire restricted stock.

(c) **General Purpose**. The Company, by means of the Plan, seeks to retain the services of the group of persons eligible to receive Stock Awards, to secure and retain the services of new members of this group and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. DEFINITIONS.

(a) ***"Affiliate"*** means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(b) ***"Board"*** means the Board of Directors of the Company.

(c) ***"Capitalization Adjustment"*** has the meaning ascribed to that term in Section

(d) ***"Change in Control"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction, provided, however, a Change in Control shall not be deemed to occur solely because the level of Ownership held by any Exchange Act Person (the "Subject Person") exceeds the designated percentage threshold of the outstanding voting securities as a

result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur; or

(iv) there is consummated a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the Company immediately prior to such sale, lease, license or other disposition.

Notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement (it being understood, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply).

(e) ***"Code"*** means the Internal Revenue Code of 1986, as amended.

(f) ***"Committee"*** means a committee of one or more members of the Board appointed by the Board in accordance with Section 3(c).

(g) ***"Common Stock"*** means the common stock of the Company.

(h) ***"Company"*** means Threshold Pharmaceuticals, Inc., a Delaware corporation.

(i) ***"Consultant"*** means any person, including an advisor, (i) engaged by the Company or an Affiliate to render consulting or advisory services and who is compensated for such services or (ii) serving as a member of the Board of Directors of an Affiliate and who is

compensated for such services, However, the term "Consultant" shall not include Directors who are not compensated by the Company for their services as Directors, and the payment of a director's fee by the Company for services as a Director shall not cause a Director to be considered a "Consultant" for purposes of the Plan.

(j) ***"Continuous Service"*** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or a Director shall not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy or in the written terms of the Participant's leave of absence.

(k) ***"Corporate Transaction"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least fifty percent (50%) of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(l) ***"Director"*** means a member of the Board of Directors of the Company.

(m) ***"Disability"*** means the inability of a person, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of that person's position with the Company or an Affiliate because of the sickness or injury of the person.

(n) ***"Employee"*** means any person employed by the Company or an Affiliate. Service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute "employment" by the Company or an Affiliate.

(o) ***"Entity"*** means a corporation, partnership or other entity.

(p) ***"Exchange Act"*** means the Securities Exchange Act of 1934, as amended.

(q) ***"Exchange Act Person"*** means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (A) the Company or any Subsidiary of the Company, (B) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (C) an underwriter temporarily holding securities pursuant to an offering of such securities, or (D) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company.

(r) ***"Fair Market Value"*** means, as of any date, the value of the Common Stock determined in good faith by the Board, and in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations.

(s) ***"Incentive Stock Option"*** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(t) ***"Nonstatutory Stock Option"*** means an Option not intended to qualify as an Incentive Stock Option.

(u) ***"Officer"*** means any person designated by the Company as an officer.

(v) ***"Option"*** means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

(w) ***"Option Agreement"*** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(x) ***"Optionholder"*** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(y) ***"Own," "Owned," "Owner," "Ownership"*** A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(z) ***"Participant"*** means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(aa) ***"Plan"*** means this Threshold Pharmaceuticals, Inc. 2001 Equity Incentive Plan.

(bb) ***"Securities Act"*** means the Securities Act of 1933, as amended.

(cc) ***"Stock Award"*** means any right granted under the Plan, including an Option, a stock bonus and a right to acquire restricted stock.

(dd) ***"Stock Award Agreement"*** means a written agreement between the Company and a holder of a Stock Award evidencing the terms and conditions of an individual Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ee) ***"Subsidiary"*** means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(ff) ***"Ten Percent Stockholder"*** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates.

3. ADMINISTRATION.

(a) **Administration by Board**. The Board shall administer the Plan unless and until the Board delegates administration to a Committee, as provided in Section 3(c).

(b) **Powers of Board**. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which of the persons eligible under the Plan shall be granted Stock Awards; when and how each Stock Award shall be granted; what type or combination of types of Stock Award shall be granted; the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive Common Stock pursuant to a Stock Award; and the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or a Stock Award as provided in Section 12.

(iv) To terminate or suspend the Plan as provided in Section 13.

(v) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan.

(c) **Delegation to Committee**. The Board may delegate administration of the Plan to a Committee or Committees of one (1) or more members of the Board, and the term "Committee" shall apply to any person or persons to whom such authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan.

(d) **Delegation to an Officer**. The Board may delegate to one or more Officers of the Company the authority to do one or both of the following: (i) designate Officers and Employees of the Company or any of its Subsidiaries to be recipients of Stock Awards and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Officers and Employees of the Company; provided, however, that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding the foregoing, the Board may not delegate authority to an Officer to determine the Fair Market Value of the Common Stock.

(e) **Effect of Board's Decision**. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

4. SHARES SUBJECT TO THE PLAN.

(a) **Share Reserve**. Subject to the provisions of Section 11(a) relating to Capitalization Adjustments, the Common Stock that may be issued pursuant to Stock Awards shall not exceed in the aggregate seven million (7,000,000) post-split shares of Common Stock.

(b) **Reversion of Shares to the Share Reserve**. If any Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, or if any shares of Common Stock issued to a Participant pursuant to a Stock Award are forfeited back to or repurchased by the Company because of or in connection with the failure to meet a contingency or condition required to vest such shares in the Participant, the shares of Common Stock not acquired, forfeited or repurchased under such Stock Award shall revert to and again become available for issuance under the Plan; provided, however, that subject to the provisions of Section II (a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued as Incentive Stock Options shall be seven million (7,000,000) post-split shares of Common Stock.

(c) **Source of Shares**. The shares of Common Stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

(d) **Share Reserve Limitation**. To the extent required by Section 260.140.45 of Title 10 of the California Code of Regulations, the total number of shares of Common Stock issuable

upon exercise of all outstanding Options and the total number of shares of Common Stock provided for under any stock bonus or similar plan of the Company shall not exceed the applicable percentage as calculated in accordance with the conditions and exclusions of Section 260.140.45 of Title 10 of the California Code of Regulations, based on the shares of Common Stock of the Company that are outstanding at the time the calculation is made.

5. ELIGIBILITY.

(a) **Eligibility for Specific Stock Awards**. Incentive Stock Options may be granted only to Employees. Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

(b) **Ten Percent Stockholders**.

(i) A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (I 10%) of the Fair Market Value of the Common Stock on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

(ii) A Ten Percent Stockholder shall not be granted a Nonstatutory Stock Option unless the exercise price of such Option is at least (i) one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock on the date of grant as is permitted by Section 260.140.41 of Title 10 of the California Code of Regulations at the time of the grant of the Option.

(iii) A Ten Percent Stockholder shall not be granted a restricted stock award unless the purchase price of the restricted stock is at least (i) one hundred percent (100%) of the Fair Market Value of the Common Stock on the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock on the date of grant as is permitted by Section 260.140.41 of Title 10 of the California Code of Regulations at the time of the grant of the restricted stock award.

(c) **Consultants**. A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or the sale of the Company's securities to such Consultant is not exempt under Rule 701 of the Securities Act ("Rule 701") because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of some other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on

exercise of each type of Option. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) **Term**. Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, no Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) **Exercise Price of an Incentive Stock Option**. Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, the exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Incentive Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(c) **Exercise Price of a Nonstatutory Stock Option**. Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, the exercise price of each Nonstatutory Stock Option shall be not less than eighty-five percent (85%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, a Nonstatutory Stock Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(d) **Consideration**. The purchase price of Common Stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (i) in cash at the time the Option is exercised or (ii) at the discretion of the Board at the time of the grant of the Option (or subsequently in the case of a Nonstatutory Stock Option) (1) by delivery to the Company of other Common Stock, (2) according to a deferred payment or other similar arrangement with the Optionholder or (3) in any other form of legal consideration that may be acceptable to the Board. Unless otherwise specifically provided in the Option, the purchase price of Common Stock acquired pursuant to an Option that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes). At any time that the Company is incorporated in Delaware, payment of the Common Stock's "par value," as defined in the Delaware General Corporation Law, shall not be made by deferred payment.

In the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid (1) the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement and (2) the treatment of the Option as a variable award for financial accounting purposes.

(e) **Transferability of an Incentive Stock Option**. An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(f) **Transferability of a Nonstatutory Stock Option**. A Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution and, to the extent provided in the Option Agreement, to such further extent as permitted by Section 260.140.41 (d) of Title 10 of the California Code of Regulations at the time of the grant of the Option, and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. If the Nonstatutory Stock Option does not provide for transferability, then the Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(g) **Vesting Generally**. The total number of shares of Common Stock subject to an Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this Section 6(g) are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

(h) **Minimum Vesting**. Notwithstanding the foregoing Section 6(g), to the extent that the following restrictions on vesting are required by Section 260.140.41 (f) of Title 10 of the California Code of Regulations at the time of the grant of the Option, then:

(i) Options granted to an Employee who is not an Officer, Director or Consultant shall provide for vesting of the total number of shares of Common Stock at a rate of at least twenty percent (20%) per year over five (5) years from the date the Option was granted, subject to reasonable conditions such as continued employment; and

(ii) Options granted to Officers, Directors or Consultants may be made fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the Company.

(i) **Termination of Continuous Service**. In the event that an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than thirty (30) days unless such termination is for cause), or (ii) the

expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

(j) **Extension of Termination Date**. An Optionholder's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (1) the expiration of the term of the Option set forth in Section 6(a) or (ii) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

(k) **Disability of Optionholder**. In the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six (6) months) or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.

(l) **Death of Optionholder**. In the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionholder's death pursuant to Section 6(e) or 6(f), but only within the period ending on the earlier of (1) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six (6) months) or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate.

(m) **Early Exercise**. The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Subject to the "Repurchase Limitation" in Section 10(h), any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate. Provided that the "Repurchase Limitation" in Section I 0(h) is not violated, the Company will not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option.

(n) **Right of Repurchase**. Subject to the "Repurchase Limitation" in Section 10(h), the Option may, but need not, include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Optionholder pursuant to the exercise of the Option. Provided that the "Repurchase Limitation" in Section 10(h) is not violated, the Company will not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option.

(o) **Right of First Refusal**. The Option may, but need not, include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Optionholder of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option. Except as expressly provided in this Section 6(o), such right of first refusal shall otherwise comply with any applicable provisions of the Bylaws of the Company.

7. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.

(a) **Stock Bonus Awards**. Each stock bonus agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of stock bonus agreements may change from time to time, and the terms and conditions of separate stock bonus agreements need not be identical, but each stock bonus agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration**. A stock bonus may be awarded in consideration for past services actually rendered to the Company or an Affiliate for its benefit.

(ii) **Vesting**. Subject to the "Repurchase Limitation" in Section 10(h), shares of Common Stock awarded under the stock bonus agreement may, but need not, be subject to a share repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

(iii) **Termination of Participant's Continuous Service**. Subject to the "Repurchase Limitation" in Section 10(h), in the event that a Participant's Continuous Service terminates, the Company may reacquire any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the stock bonus agreement.

(iv) **Transferability**. Rights to acquire shares of Common Stock under the stock bonus agreement shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant.

(b) **Restricted Stock Awards**. Each restricted stock purchase agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of the restricted stock purchase agreements may change from time to time, and the terms and conditions of separate restricted stock purchase agreements need not be identical, but each restricted stock purchase agreement shall include (through incorporation of

provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) **Purchase Price**. Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, the purchase price of restricted stock awards shall not be less than eighty-five percent (85%) of the Common Stock's Fair Market Value on the date such award is made or at the time the purchase is consummated.

(ii) **Consideration**. The purchase price of Common Stock acquired pursuant to the restricted stock purchase agreement shall be paid either: (i) in cash at the time of purchase; (ii) at the discretion of the Board, according to a deferred payment or other similar arrangement with the Participant; or (iii) in any other form of legal consideration that may be acceptable to the Board in its discretion; provided, however, that at any time that the Company is incorporated in Delaware, then payment of the Common Stock's "par value," as defined in the Delaware General Corporation Law, shall not be made by deferred payment.

(iii) **Vesting**. Subject to the "Repurchase Limitation" in Section 10(h), shares of Common Stock acquired under the restricted stock purchase agreement may, but need not, be subject to a share repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

(iv) **Termination of Participant's Continuous Service**. Subject to the "Repurchase Limitation" in Section 10(h), in the event that a Participant's Continuous Service terminates, the Company may repurchase or otherwise reacquire any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the restricted stock purchase agreement.

(v) **Transferability**. Rights to acquire shares of Common Stock under the restricted stock purchase agreement shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant.

8. COVENANTS OF THE COMPANY.

(a) **Availability of Shares**. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

(b) **Securities Law Compliance**. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained.

9. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

10. MISCELLANEOUS.

(a) **Acceleration of Exercisability and Vesting**. The Board shall have the power to accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(b) **Stockholder Rights**. No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms.

(c) **No Employment or other Service Rights**. Nothing in the Plan or any instrument executed or Stock Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(d) **Incentive Stock Option $100,000 Limitation**. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and its Affiliates) exceeds one hundred thousand dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of an Stock Award Agreement.

(e) **Investment Assurances**. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (1) the issuance of the shares of Common Stock

upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act or (2) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(f) **Withholding Obligations**. To the extent provided by the terms of a Stock Award Agreement, the Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares of Common Stock from the shares of Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of Common Stock under the Stock Award; provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid variable award accounting); or (iii) delivering to the Company owned and unencumbered shares of Common Stock.

(g) **Information Obligation**. To the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall deliver financial statements to Participants at least annually. This Section 10(g) shall not apply to key Employees whose duties in connection with the Company assure them access to equivalent information.

(h) **Repurchase Limitation**. The terms of any repurchase option shall be specified in the Stock Award and may be either at Fair Market Value at the time of repurchase or at not less than the original purchase price. To the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations at the time a Stock Award is made, any repurchase option contained in a Stock Award granted to a person who is not an Officer, Director or Consultant shall be upon the terms described below:

(i) **Fair Market Value**. If the repurchase option gives the Company the right to repurchase the shares of Common Stock upon termination of employment at not less than the Fair Market Value of the shares of Common Stock to be purchased on the date of termination of Continuous Service, then (i) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within ninety (90) days of termination of Continuous Service (or in the case of shares of Common Stock issued upon exercise of Stock Awards after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code regarding "qualified small business stock") and (ii) the right terminates when the shares of Common Stock become publicly traded.

(ii) **Original Purchase Price**. If the repurchase option gives the Company the right to repurchase the shares of Common Stock upon termination of Continuous Service at the

original purchase price, then (i) the right to repurchase at the original purchase price shall lapse at the rate of at least twenty percent (20%) of the shares of Common Stock per year over five (5) years from the date the Stock Award is granted (without respect to the date the Stock Award was exercised or became exercisable) and (ii) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within ninety (90) days of termination of Continuous Service (or in the case of shares of Common Stock issued upon exercise of Options after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code regarding "qualified small business stock").

11. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) **Capitalization Adjustments**. If any change is made in, or other event occurs with respect to, the Common Stock subject to the Plan or subject to any Stock Award without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company (each a "Capitalization Adjustment"), the Plan will be appropriately adjusted in the class(es) and maximum number of securities subject to the Plan pursuant to Sections 4(a) and 4(b) and the maximum number of securities subject to award to any person pursuant to Section 5(c), and the outstanding Stock Awards will be appropriately adjusted in the class(es) and number of securities and price per share of Common Stock subject to such outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction "without receipt of consideration" by the Company.)

(b) **Dissolution or Liquidation**. In the event of a dissolution or liquidation of the Company, then all outstanding Stock Awards shall terminate immediately prior to the completion of such dissolution or liquidation.

(c) **Corporate Transaction**. In the event of a Corporate Transaction, any surviving corporation or acquiring corporation may assume any or all Stock Awards outstanding under the Plan or may substitute similar stock awards for Stock Awards outstanding under the Plan (it being understood that similar stock awards include, but are not limited to, awards to acquire the same consideration paid to the stockholders or the Company, as the case may be, pursuant to the Corporate Transaction). In the event that any surviving corporation or acquiring corporation does not assume any or all such outstanding Stock Awards or substitute similar stock awards for such outstanding Stock Awards, then with respect to Stock Awards that have been neither assumed nor substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction, the vesting of such Stock Awards (and, if applicable, the time at which such Stock Awards may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective time of the Corporate Transaction), and the Stock Awards shall terminate if not exercised (if applicable) at or prior to

such effective time. With respect to any other Stock Awards outstanding under the Plan that have been neither assumed nor substituted, the vesting of such Stock Awards (and, if applicable, the time at which such Stock Award may be exercised) shall not be accelerated unless otherwise provided in a written agreement between the Company or any Affiliate and the holder of such Stock Award, and such Stock Awards shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction.

(d) **Change in Control**. A Stock Award held by any Participant whose Continuous Service has not terminated prior to the effective time of a Change in Control may be subject to additional acceleration of vesting and exercisability upon or after such event as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

12. AMENDMENT OF THE PLAN AND STOCK AWARDS.

(a) **Amendment of Plan**. The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section II (a) relating to Capitalization Adjustments, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy the requirements of Section 422 of the Code.

(b) **Stockholder Approval**. The Board, in its sole discretion, may submit any other amendment to the Plan for stockholder approval.

(c) **Contemplated Amendments**. It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.

(d) **No Impairment of Rights**. Rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

(e) **Amendment of Stock Awards**. The Board at any time, and from time to time, may amend the terms of any one or more Stock Awards; provided, however, that the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

13. TERMINATION OR SUSPENSION OF THE PLAN.

(a) **Plan Term**. The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on the day before the tenth (10th) anniversary of the date the Plan is adopted by the Board or approved by the stockholders of the Company, whichever is earlier. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) **No Impairment of Rights**. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the Participant.

14. EFFECTIVE DATE OF PLAN.

The Plan shall become effective as determined by the Board, but no Stock Award shall be exercised (or, in the case of a stock bonus, shall be granted) unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

15. CHOICE OF LAW.

The law of the State of California shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of laws rules.

Exhibit 10.2

2004 EQUITY INCENTIVE PLAN
OF
THRESHOLD PHARMACEUTICALS, INC.

1. **Purpose of this Plan**

The purpose of this 2004 Equity Incentive Plan is to enhance the long-term stockholder value of Threshold Pharmaceuticals, Inc. by offering opportunities to eligible individuals to participate in the growth in value of the equity of Threshold Pharmaceuticals, Inc.

2. **Definitions and Rules of Interpretation**

2.1 **Definitions**.

This Plan uses the following defined terms:

(a) ***"Administrator"*** means the Board or the Committee, or any officer or employee of the Company to whom the Board or the Committee delegates authority to administer this Plan.

(b) ***"Affiliate"*** means a "parent" or "subsidiary" (as each is defined in Section 424 of the Code) of the Company and any other entity that the Board or Committee designates as an "Affiliate" for purposes of this Plan.

(c) ***"Applicable Law"*** means any and all laws of whatever jurisdiction, within or without the United States, and the rules of any stock exchange or quotation system on which Shares are listed or quoted, applicable to the taking or refraining from taking of any action under this Plan, including the administration of this Plan and the issuance or transfer of Awards or Award Shares.

(d) ***"Award"*** means a Stock Award, SAR, Cash Award, or Option granted in accordance with the terms of this Plan.

(e) ***"Award Agreement"*** means the document evidencing the grant of an Award.

(f) ***"Award Shares"*** means Shares covered by an outstanding Award or purchased under an Award.

(g) ***"Awardee"*** means: (i) a person to whom an Award has been granted, including a holder of a Substitute Award, (ii) a person to whom an Award has been transferred in accordance with all applicable requirements of Sections 6.5, 7(h), and 16.

(h) ***"Board"*** means the Board of Directors of the Company.

(i) ***"Cash Award"*** means the right to receive cash as described in Section 8.3.

(j) ***"Cause"*** means employment related dishonesty, fraud, misconduct or disclosure or misuse of confidential information, or other employment related conduct that is likely to cause significant injury to the Company, an Affiliate, or any of their respective employees, officers or directors (including, without limitation, commission of a felony or similar offense), in each case as determined by the Administrator. "Cause" shall not require that a civil judgment or criminal conviction have been entered against or guilty plea shall have been made by the Awardee regarding any of the matters referred to in the previous sentence. Accordingly, the Administrator shall be entitled to determine "Cause" based on the Administrator's good faith belief. If the Awardee is criminally charged with a felony or similar offense that shall be a sufficient, but not a necessary, basis for such belief.

(k) ***"Change in Control"*** means any transaction or event that the Board specifies as a Change in Control under Section 10.4.

(l) ***"Code"*** means the Internal Revenue Code of 1986.

(m) ***"Committee"*** means a committee composed of Company Directors appointed in accordance with the Company's charter documents and Section 4.

(n) ***"Company"*** means Threshold Pharmaceuticals, Inc., a Delaware corporation.

(o) ***"Company Director"*** means a member of the Board.

(p) ***"Consultant"*** means an individual who, or an employee of any entity that, provides bona fide services to the Company or an Affiliate not in connection with the offer or sale of securities in a capital-raising transaction, but who is not an Employee.

(q) ***"Director"*** means a member of the Board of Directors of the Company or an Affiliate.

(r) ***"Divestiture"*** means any transaction or event that the Board specifies as a Divestiture under Section 10.5.

(s) ***"Domestic Relations Order"*** means a "domestic relations order" as defined in, and otherwise meeting the requirements of, Section 414(p) of the Code, except that reference to a "plan" in that definition shall be to this Plan.

(t) ***"Effective Date"*** means the first date of the sale by the Company of shares of its capital stock in an initial public offering pursuant to a registration statement on Form S-1 filed with the SEC.

(u) ***"Employee"*** means a regular employee of the Company or an Affiliate, including an officer or Director, who is treated as an employee in the personnel records of the Company or an Affiliate, but not individuals who are classified by the Company or an Affiliate as: (i) leased from or otherwise employed by a third party, (ii) independent contractors, or (iii) intermittent or temporary workers. The Company's or an Affiliate's classification of an individual as an "Employee" (or as not an "Employee") for purposes of this Plan shall not be altered retroactively even if that classification is changed retroactively for another purpose as a result of an audit, litigation or otherwise. An Awardee shall not cease to be an Employee due to transfers between locations of the Company, or between the Company and an Affiliate, or to any successor to the Company or an Affiliate that assumes the Awardee's Options under Section 10. Neither service as a Director nor receipt of a director's fee shall be sufficient to make a Director an "Employee."

(v) ***"Exchange Act"*** means the Securities Exchange Act of 1934.

(w) ***"Executive"*** means, if the Company has any class of any equity security registered under Section 12 of the Exchange Act, an individual who is subject to Section 16 of the Exchange Act or who is a "covered employee" under Section 162(m) of the Code, in either case because of the individual's relationship with the Company or an Affiliate. If the Company does not have any class of any equity security registered under Section 12 of the Exchange Act, "Executive" means any (i) Director, (ii) officer elected or appointed by the Board, or (iii) beneficial owner of more than 10% of any class of the Company's equity securities.

(x) ***"Expiration Date"*** means, with respect to an Award, the date stated in the Award Agreement as the expiration date of the Award or, if no such date is stated in the Award Agreement, then the last day of the maximum exercise period for the Award, disregarding the effect of an Awardee's Termination or any other event that would shorten that period.

(y) ***"Fair Market Value"*** means the value of Shares as determined under Section 17.2.

(z) ***"Fundamental Transaction"*** means any transaction or event described in Section 10.3.

(aa) ***"Good Reason"*** means (i) a material diminution in responsibility or compensation, or (ii) requiring Awardee to work in a location (other than normal business travel) which is more than 50 miles from Awardee's principal place of business before the change.

(bb) ***"Grant Date"*** means the date the Administrator approves the grant of an Award. However, if the Administrator specifies that an Award's Grant Date is a

future date or the date on which a condition is satisfied, the Grant Date for such Award is that future date or the date that the condition is satisfied.

(cc) ***"Incentive Stock Option"*** means an Option intended to qualify as an incentive stock option under Section 422 of the Code and designated as an Incentive Stock Option in the Award Agreement for that Option.

(dd) ***"Involuntary Termination"*** means termination by the Company without Cause or termination by the Awardee for Good Reason.

(ee) ***"Nonstatutory Option"*** means any Option other than an Incentive Stock Option.

(ff) ***"Objectively Determinable Performance Condition"*** shall mean a performance condition (i) that is established (A) at the time an Award is granted or (B) no later than the earlier of (1) 90 days after the beginning of the period of service to which it relates, or (2) before the elapse of 25% of the period of service to which it relates, (ii) that is uncertain of achievement at the time it is established, and (iii) the achievement of which is determinable by a third party with knowledge of the relevant facts. Examples of measures that may be used in Objectively Determinable Performance Conditions include net order dollars, net profit dollars, net profit growth, net revenue dollars, revenue growth, individual performance, earnings per share, return on assets, return on equity, and other financial objectives, objective customer satisfaction indicators and efficiency measures, each with respect to the Company and/or an Affiliate or individual business unit.

(gg) ***"Officer"*** means an officer of the Company as defined in Rule 16a-1 adopted under the Exchange Act.

(hh) ***"Option"*** means a right to purchase Shares of the Company granted under this Plan.

(ii) ***"Option Price"*** means the price payable under an Option for Shares, not including any amount payable in respect of withholding or other taxes.

(jj) ***"Option Shares"*** means Shares covered by an outstanding Option or purchased under an Option.

(kk) ***"Plan"*** means this 2004 Equity Incentive Plan of Threshold Pharmaceuticals, Inc.

(ll) ***"Prior Plan"*** means the Company's 2001 Equity Incentive Plan.

(mm) ***"Purchase Price"*** means the price payable under a Stock Award for Shares, not including any amount payable in respect of withholding or other taxes.

(nn) ***"Rule 16b-3"*** means Rule 16b-3 adopted under Section 16(b) of the Exchange Act.

(oo) ***"SAR"*** or ***"Stock Appreciation Right"*** means a right to receive cash and/or Shares based on a change in the Fair Market Value of a specific number of Shares pursuant to an Award Agreement, as described in Section 8.1.

(pp) ***"Securities Act"*** means the Securities Act of 1933.

(qq) ***"Share"*** means a share of the common stock of the Company or other securities substituted for the common stock under Section 10.

(rr) ***"Stock Award"*** means an offer by the Company to sell shares subject to certain restrictions pursuant to the Award Agreement as described in Section 8.2 or, as determined by the Committee, a notional account representing the right to be paid an amount based on Shares.

(ss) ***"Substitute Award"*** means a Substitute Option, Substitute SAR or Substitute Stock Award granted in accordance with the terms of this Plan.

(tt) ***"Substitute Option"*** means an Option granted in substitution for, or upon the conversion of, an option granted by another entity to purchase equity securities in the granting entity.

(uu) ***"Substitute SAR"*** means a SAR granted in substitution for, or upon the conversion of, a stock appreciation right granted by another entity with respect to equity securities in the granting entity.

(vv) ***"Substitute Stock Award"*** means a Stock Award granted in substitution for, or upon the conversion of, a stock award granted by another entity to purchase equity securities in the granting entity.

(ww) ***"Termination"*** means that the Awardee has ceased to be, with or without any cause or reason, an Employee, Director or Consultant. However, unless so determined by the Administrator, or otherwise provided in this Plan, "Termination" shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an Affiliate to cease being an Affiliate shall be treated as the "Termination" of that Affiliate's Employees, Directors, and Consultants.

2.2 **Rules of Interpretation**. Any reference to a "Section," without more, is to a Section of this Plan. Captions and titles are used for convenience in this Plan and shall not, by themselves, determine the meaning of this Plan. Except when otherwise indicated by the context, the singular includes the plural and vice versa. Any reference to a statute

is also a reference to the applicable rules and regulations adopted under that statute. Any reference to a statute, rule or regulation, or to a section of a statute, rule or regulation, is a reference to that statute, rule, regulation, or section as amended from time to time, both before and after the Effective Date and including any successor provisions.

3. **Shares Subject to this Plan; Term of this Plan**

3.1 **Number of Award Shares**. The Shares issuable under this Plan shall be authorized but unissued or reacquired Shares, including Shares repurchased by the Company on the open market. The number of Shares initially reserved for issuance over the term of this Plan shall be 4,000,000. Except as required by Applicable Law, Shares shall not reduce the number of Shares reserved for issuance under this Plan until the earlier of the date such Shares are vested pursuant to the terms of the applicable Award or the actual date of delivery of the Shares to the Awardee. Notwithstanding the foregoing, the maximum number of Shares shall be increased by (i) the number of shares available for issuance, as of the Effective Date, under the Prior Plan as last approved by the Company's stockholders, including the Shares subject to outstanding awards under the Prior Plan, plus (ii) those Shares issued under the Plan or Prior Plan that are forfeited or repurchased by the Company at the original purchase price or less or that are issuable upon exercise of awards granted under the Plan or Prior Plan that expire or become unexercisable for any reason after the Effective Date, plus (iii) those Shares that are Restored pursuant to the decision of the Board or Committee pursuant to Section 6.4(a) to deliver only such Shares as are necessary to award the net Share appreciation. The repurchase of Shares by the Company shall not increase the maximum number of Shares that may be issued under this Plan to the extent the Company repurchases Shares that were originally exercised or purchased with other previously owned Shares. The maximum number of Shares shall be cumulatively increased on the first January 1 after the Effective Date and each January 1 thereafter for 9 more years, by a number of Shares equal to the lesser of (a) 5% of the number of Shares issued and outstanding on the immediately preceding December 31, (b) 2,000,000 Shares, and (c) a number of Shares set by the Board.

3.2 **Source of Shares.** Award Shares may be: (a) Shares that have never been issued, (b) Shares that have been issued but are no longer outstanding, or (c) Shares that are outstanding and are acquired to discharge the Company's obligation to deliver Award Shares.

3.3 **Term of this Plan**

(a) This Plan shall be effective on, and Awards may be granted under this Plan on and after, the earliest the date on which the Plan has been both adopted by the Board and approved by the Company's stockholders.

(b) Subject to the provisions of Section 13, Awards may be granted under this Plan for a period of ten years from the earlier of the date on which the Board approves this Plan and the date the Company's stockholders approve this Plan. Accordingly, Awards may not be granted under this Plan after the earlier of those dates.

4. **Administration**

4.1 **General**

(a) The Board shall have ultimate responsibility for administering this Plan. The Board may delegate certain of its responsibilities to a Committee, which shall consist of at least two members of the Board. The Board or the Committee may further delegate its responsibilities to any Employee of the Company or any Affiliate. Where this Plan specifies that an action is to be taken or a determination made by the Board, only the Board may take that action or make that determination. Where this Plan specifies that an action is to be taken or a determination made by the Committee, only the Committee may take that action or make that determination. Where this Plan references the "Administrator," the action may be taken or determination made by the Board, the Committee, or other Administrator. However, only the Board or the Committee may approve grants of Awards to Executives, and an Administrator other than the Board or the Committee may grant Awards only within the guidelines established by the Board or Committee. Moreover, all actions and determinations by any Administrator are subject to the provisions of this Plan.

(b) So long as the Company has registered and outstanding a class of equity securities under Section 12 of the Exchange Act, the Committee shall consist of Company Directors who are "Non-Employee Directors" as defined in Rule 16b-3 and, after the expiration of any transition period permitted by Treasury Regulations Section 1.162-27(h)(3), who are "outside directors" as defined in Section 162(m) of the Code.

4.2 **Authority of the Board or the Committee.** Subject to the other provisions of this Plan, the Board or the Committee shall have the authority to:

(a) grant Awards, including Substitute Awards;

(b) determine the Fair Market Value of Shares;

(c) determine the Option Price and the Purchase Price of Awards;

(d) select the Awardees;

(e) determine the times Awards are granted;

(f) determine the number of Shares subject to each Award;

(g) determine the methods of payment that may be used to purchase Award Shares;

(h) determine the methods of payment that may be used to satisfy withholding tax obligations;

(i) determine the other terms of each Award, including but not limited to the time or times at which Awards may be exercised, whether and under what conditions an Award is assignable, and whether an Option is a Nonstatutory Option or an Incentive Stock Option;

(j) modify or amend any Award;

(k) authorize any person to sign any Award Agreement or other document related to this Plan on behalf of the Company;

(l) determine the form of any Award Agreement or other document related to this Plan, and whether that document, including signatures, may be in electronic form;

(m) interpret this Plan and any Award Agreement or document related to this Plan;

(n) correct any defect, remedy any omission, or reconcile any inconsistency in this Plan, any Award Agreement or any other document related to this Plan;

(o) adopt, amend, and revoke rules and regulations under this Plan, including rules and regulations relating to sub-plans and Plan addenda;

(p) adopt, amend, and revoke special rules and procedures which may be inconsistent with the terms of this Plan, set forth (if the Administrator so chooses) in sub-plans regarding (for example) the operation and administration of this Plan and the terms of Awards, if and to the extent necessary or useful to accommodate non-U.S. Applicable Laws and practices as they apply to Awards and Award Shares held by, or granted or issued to, persons working or resident outside of the United States or employed by Affiliates incorporated outside the United States;

(q) determine whether a transaction or event should be treated as a Change in Control, a Divestiture or neither;

(r) determine the effect of a Fundamental Transaction and, if the Board determines that a transaction or event should be treated as a Change in Control or a Divestiture, then the effect of that Change in Control or Divestiture; and

(s) make all other determinations the Administrator deems necessary or advisable for the administration of this Plan.

4.3 **Scope of Discretion.** Subject to the provisions of this Section 4.3, on all matters for which this Plan confers the authority, right or power on the Board, the Committee, or other Administrator to make decisions, that body may make those decisions in its sole and absolute discretion. Those decisions will be final, binding and conclusive. In making its decisions, the Board, Committee or other Administrator need not treat all persons eligible to receive Awards, all Awardees, all Awards or all Award Shares the same way. Notwithstanding anything herein to the contrary, and except as provided in Section 13.3, the discretion of the Board, Committee or other Administrator is subject to the specific provisions and specific limitations of this Plan, as well as all rights conferred on specific Awardees by Award Agreements and other agreements.

5. **Persons Eligible to Receive Awards**

5.1 **Eligible Individuals.** Awards (including Substitute Awards) may be granted to, and only to, Employees, Directors and Consultants, including to prospective Employees, Directors and Consultants conditioned on the beginning of their service for the Company or an Affiliate. However, Incentive Stock Options may only be granted to Employees, as provided in Section 7(g).

5.2 **Section 162(m) Limitation.**

(a) **Options and SARs.** Subject to the provisions of this Section 5.2, for so long as the Company is a "publicly held corporation" within the meaning of Section 162(m) of the Code: (i) no Employee may be granted one or more SARs and Options within any fiscal year of the Company under this Plan to purchase more than 2,000,000 Shares under Options or to receive compensation calculated with reference to more than that number of Shares under SARs, subject to adjustment pursuant to Section 10, (ii) Options and SARs may be granted to an Executive only by the Committee (and, notwithstanding anything to the contrary in Section 4.1(a), not by the Board). If an Option or SAR is cancelled without being exercised or of the Option Price of an Option is reduced, that cancelled or repriced Option or SAR shall continue to be counted against the limit on Awards that my be granted to any individual under this Section 5.2. Notwithstanding anything herein to the contrary, a new Employee of the Company or an Affiliate shall be eligible to receive up to a maximum of 3,000,000 Shares under Options in the calendar year which they commence employment, or such compensation calculated with reference to such number of Shares under SARs, subject to adjustment pursuant to Section 10.

(b) **Cash Awards and Stock Awards.** Any Cash Award or Stock Award intended as "qualified performance-based compensation" within the meaning of Section 162(m) of the Code must vest or become exercisable contingent on the achievement of one or more Objectively Determinable Performance Conditions. The Committee shall have the discretion to determine the time and manner of compliance with Section 162(m) of the Code.

6. **Terms and Conditions of Options**

The following rules apply to all Options:

6.1 **Price.** Except as specifically provided herein, no nonstatutory Option may have an Option Price less than 85% of the Fair Market Value of the Shares on the Grant Date. No Option intended as "qualified incentive-based compensation" within the meaning of Section 162(m) of the Code may have an Option Price less than 100% of the Fair Market Value of the Shares on the Grant Date. In no event will the Option Price of any Option be less than the par value of the Shares issuable under the Option if that is required by Applicable Law. The Option Price of an Incentive Stock Option shall be subject to Section 7(f).

6.2 **Term.** No Option shall be exercisable after its Expiration Date. No Option may have an Expiration Date that is more than ten years after its Grant Date. Additional provisions regarding the term of Incentive Stock Options are provided in Sections 7(a) and 7(e).

6.3 **Vesting.** Options shall be exercisable: (a) on the Grant Date, or (b) in accordance with a schedule related to the Grant Date, the date the Optionee's directorship, employment or consultancy begins, or a different date specified in the Option Agreement. Additional provisions regarding the vesting of Incentive Stock Options are provided in Section 7(c). No Option granted to an individual who is subject to the overtime pay provisions of the Fair Labor Standards Act may be exercised before the expiration of six months after the Grant Date.

6.4 **Form and Method of Payment.**

(a) The Board or Committee shall determine the acceptable form and method of payment for exercising an Option. So long as variable accounting pursuant to "APB 25" does not apply and the Board or Committee otherwise determines there is no material adverse accounting consequence at the time of exercise, the Board or Committee may require the delivery in Shares for the value of the net appreciation of the Shares at the time of exercise over the exercise price. The difference between full number of Shares covered by the exercised portion of the Award and the number of Shares actually delivered shall be restored to the amount of Shares reserved for issuance under Section 3.1.

(b) Acceptable forms of payment for all Option Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans.

(c) In addition, the Administrator may permit payment to be made by any of the following methods:

(i) other Shares, or the designation of other Shares, which (A) are "mature" shares for purposes of avoiding variable accounting treatment under generally accepted accounting principles (generally mature shares are those that have been owned by the Optionee for more than six months on the date of surrender), and (B) have a Fair Market Value on the date of surrender equal to the Option Price of the Shares as to which the Option is being exercised;

(ii) provided that a public market exists for the Shares, consideration received by the Company under a procedure under which a licensed broker-dealer advances funds on behalf of an Optionee or sells Option Shares on behalf of an Optionee (a "***Cashless Exercise Procedure***"), provided that if the Company extends or arranges for the extension of credit to an Optionee under any Cashless Exercise Procedure, no Officer or Director may participate in that Cashless Exercise Procedure;

(iii) cancellation of any debt owed by the Company or any Affiliate to the Optionee by the Company including without limitation waiver of compensation due or accrued for services previously rendered to the Company; and

(iv) any combination of the methods of payment permitted by any paragraph of this Section 6.4.

(d) The Administrator may also permit any other form or method of payment for Option Shares permitted by Applicable Law.

6.5 **Nonassignability of Options.** Except as determined by the Administrator, no Option shall be assignable or otherwise transferable by the Optionee except by will or by the laws of descent and distribution. However, Options may be transferred and exercised in accordance with a Domestic Relations Order and may be exercised by a guardian or conservator appointed to act for the Optionee. Incentive Stock Options may only be assigned in compliance with Section 7(h).

6.6 **Substitute Options.** The Board may cause the Company to grant Substitute Options in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger, tender offer, or other similar transaction) or of all or a portion of the assets of any entity. Any such substitution shall be effective on the effective date of the acquisition. Substitute Options may be Nonstatutory Options or Incentive Stock Options. Unless and to the extent specified otherwise by the Board, Substitute Options shall have the same terms and conditions as the options they replace, except that (subject to the provisions of Section 10) Substitute Options shall be Options to purchase Shares rather than equity securities of the granting entity and shall have an Option Price determined by the Board.

6.7 **Repricings**. Options may be repriced, replaced or regranted through cancellation or modification.

7. **Incentive Stock Options.**

The following rules apply only to Incentive Stock Options and only to the extent these rules are more restrictive than the rules that would otherwise apply under this Plan. With the consent of the Optionee, or where this Plan provides that an action may be taken notwithstanding any other provision of this Plan, the Administrator may deviate from the requirements of this Section, notwithstanding that any Incentive Stock Option modified by the Administrator will thereafter be treated as a Nonstatutory Option.

(a) The Expiration Date of an Incentive Stock Option shall not be later than ten years from its Grant Date, with the result that no Incentive Stock Option may be exercised after the expiration of ten years from its Grant Date.

(b) No Incentive Stock Option may be granted more than ten years from the date this Plan was approved by the Board.

(c) Options intended to be incentive stock options under Section 422 of the Code that are granted to any single Optionee under all incentive stock option plans of the Company and its Affiliates, including incentive stock options granted under this Plan, may not vest at a rate of more than $100,000 in Fair Market Value of stock (measured on the grant dates of the options) during any calendar year. For this purpose, an option vests with respect to a given share of stock the first time its holder may purchase that share, notwithstanding any right of the Company to repurchase that share. Unless the administrator of that option plan specifies otherwise in the related agreement governing the option, this vesting limitation shall be applied by, to the extent necessary to satisfy this $ 100,000 rule, treating certain stock options that were intended to be incentive stock options under Section 422 of the Code as Nonstatutory Options. The stock options or portions of stock options to be reclassified as Nonstatutory Options are those with the highest option prices, whether granted under this Plan or any other equity compensation plan of the Company or any Affiliate that permits that treatment. This Section 7(c) shall not cause an Incentive Stock Option to vest before its original vesting date or cause an Incentive Stock Option that has already vested to cease to be vested.

(d) In order for an Incentive Stock Option to be exercised for any form of payment other than those described in Section 6.4(b), that right must be stated at the time of grant in the Option Agreement relating to that Incentive Stock Option.

(e) Any Incentive Stock Option granted to a Ten Percent Stockholder, must have an Expiration Date that is not later than five years from its Grant Date, with the result that no such Option may be exercised after the expiration of five years from the Grant Date. A "***Ten Percent Stockholder***" is any person who, directly or by attribution under Section 424(d) of the Code, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or of any Affiliate on the Grant Date.

(f) The Option Price of an Incentive Stock Option shall never be less than the Fair Market Value of the Shares at the Grant Date. The Option Price for the Shares covered by an Incentive Stock Option granted to a Ten Percent Stockholder shall never be less than 110% of the Fair Market Value of the Shares at the Grant Date.

(g) Incentive Stock Options may be granted only to Employees. If an Optionee changes status from an Employee to a Consultant, that Optionee's Incentive Stock Options become Nonstatutory Options if not exercised within the time period described in Section 7(i) (determined by treating that change in status as a Termination solely for purposes of this Section 7(g)).

(h) No rights under an Incentive Stock Option may be transferred by the Optionee, other than by will or the laws of descent and distribution. During the life of the Optionee, an Incentive Stock Option may be exercised only by the Optionee. The Company's compliance with a Domestic Relations Order, or the exercise of an Incentive Stock Option by a guardian or conservator appointed to act for the Optionee, shall not violate this Section 7(h).

(i) An Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, and is not exercised within, the three-month period beginning with the Optionee's Termination for any reason other than the Optionee's death or disability (as defined in Section 22(e) of the Code). In the case of Termination due to death, an Incentive Stock Option shall continue to be treated as an Incentive Stock Option if it remains exercisable after, and is not exercised within, the three-month period after the Optionee's Termination provided it is exercised before the Expiration Date. In the case of Termination due to disability, an Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, and is not exercised within, one year after the Optionee's Termination.

(j) An Incentive Stock Option may only be modified by the Board.

8. **Stock Appreciation Rights, Stock Awards and Cash Awards**

8.1 **Stock Appreciation Rights**. The following rules apply to SARs:

(a) ***General***. SARs may be granted either alone, in addition to, or in tandem with other Awards granted under this Plan. The Administrator may grant SARs to eligible participants subject to terms and conditions not inconsistent with this Plan and determined by the Administrator. The specific terms and conditions applicable to the Awardee shall be provided for in the Award Agreement. SARs shall be exercisable, in whole or in part, at such times as the Administrator shall specify in the Award Agreement. The grant or vesting of a SAR may be made contingent on the achievement of Objectively Determinable Performance Conditions.

(b) ***Exercise of SARs.*** Upon the exercise of an SAR, in whole or in part, an Awardee shall be entitled to a payment in an amount equal to the excess of the Fair Market Value of a fixed number of Shares covered by the exercised portion of the SAR on the date of exercise, over the Fair Market Value of the Shares covered by the exercised portion of the SAR on the Grant Date. The amount due to the Awardee upon the exercise of a SAR shall be paid in cash, Shares or a combination thereof, over the period or periods specified in the Award Agreement. An Award Agreement may place limits on the amount that may be paid over any specified period or periods upon the exercise of a SAR, on an aggregate basis or as to any Awardee. A SAR shall be considered exercised when the Company receives written notice of exercise in accordance with the terms of the Award Agreement from the person entitled to exercise the SAR. If a SAR has been granted in tandem with an Option, upon the exercise of the SAR, the number of shares that may be purchased pursuant to the Option shall be reduced by the number of shares with respect to which the SAR is exercised.

(c) ***Nonassignability of SARs.*** Except as determined by the Administrator, no SAR shall be assignable or otherwise transferable by the Awardee except by will or by the laws of descent and distribution. Notwithstanding anything herein to the contrary, SARs may be transferred and exercised in accordance with a Domestic Relations Order.

(d) ***Substitute SARs.*** The Board may cause the Company to grant Substitute SARs in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Any such substitution shall be effective on the effective date of the acquisition. Unless and to the extent specified otherwise by the Board, Substitute SARs shall have the same terms and conditions as the options they replace, except that (subject to the provisions of Section 9) Substitute SARs shall be exercisable with respect to the Fair Market Value of Shares rather than equity securities of the granting entity and shall be on terms that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution.

(e) ***Repricings.*** A SAR may be repriced, replaced or regranted, through cancellation or modification.

8.2 **Stock Awards**. The following rules apply to all Stock Awards:

(a) ***General***. The specific terms and conditions of a Stock Award applicable to the Awardee shall be provided for in the Award Agreement. The Award Agreement shall state the number of Shares that the Awardee shall be entitled to receive or purchase, the terms and conditions on which the Shares shall vest, the price to be paid, whether Shares are to be delivered at the time of grant or at some deferred date specified in the Award Agreement, whether the Award is payable solely in Shares, cash or either and, if applicable, the time within which the Awardee must accept such offer. The offer shall be accepted by execution of the Award Agreement. The Administrator may require

that all Shares subject to a right of repurchase or risk of forfeiture be held in escrow until such repurchase right or risk of forfeiture lapses. The grant or vesting of a Stock Award may be made contingent on the achievement of Objectively Determinable Performance Conditions.

(b) ***Right of Repurchase***. If so provided in the Award Agreement, Award Shares acquired pursuant to a Stock Award may be subject to repurchase by the Company or an Affiliate if not vested in accordance with the Award Agreement.

(c) ***Form of Payment***. The Administrator shall determine the acceptable form and method of payment for exercising a Stock Award. Acceptable forms of payment for all Award Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. sub-plans. In addition, the Administrator may permit payment to be made by any of the methods permitted with respect to the exercise of Options pursuant to Section 6.4.

(d) ***Nonassignability of Stock Awards.*** Except as determined by the Administrator, no Stock Award shall be assignable or otherwise transferable by the Awardee except by will or by the laws of descent and distribution. Notwithstanding anything to the contrary herein, Stock Awards may be transferred and exercised in accordance with a Domestic Relations Order.

(e) ***Substitute Stock Award.*** The Board may cause the Company to grant Substitute Stock Awards in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Unless and to the extent specified otherwise by the Board, Substitute Stock Awards shall have the same terms and conditions as the stock awards they replace, except that (subject to the provisions of Section 10) Substitute Stock Awards shall be Stock Awards to purchase Shares rather than equity securities of the granting entity and shall have a Purchase Price that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution. Any such Substituted Stock Award shall be effective on the effective date of the acquisition.

8.3 **Cash Awards**. **The following rules apply to all Cash Awards:**

Cash Awards may be granted either alone, in addition to, or in tandem with other Awards granted under this Plan. After the Administrator determines that it will offer a Cash Award, it shall advise the Awardee, by means of an Award Agreement, of the terms, conditions and restrictions related to the Cash Award.

9. **Exercise of Awards**

9.1 **In General**. An Award shall be exercisable in accordance with this Plan and the Award Agreement under which it is granted.

9.2 **Time of Exercise.** Options and Stock Awards shall be considered exercised when the Company receives: (a) written notice of exercise from the person entitled to exercise the Option or Stock Award, (b) full payment, or provision for payment, in a form and method approved by the Administrator, for the Shares for which the Option or Stock Award is being exercised, and (c) with respect to Nonstatutory Options, payment, or provision for payment, in a form approved by the Administrator, of all applicable withholding taxes due upon exercise. An Award may not be exercised for a fraction of a Share. SARs shall be considered exercised when the Company receives written notice of the exercise from the person entitled to exercise the SAR.

9.3 **Issuance of Award Shares.** The Company shall issue Award Shares in the name of the person properly exercising the Award. If the Awardee is that person and so requests, the Award Shares shall be issued in the name of the Awardee and the Awardee's spouse. The Company shall endeavor to issue Award Shares promptly after an Award is exercised or after the Grant Date of a Stock Award, as applicable. Until Award Shares are actually issued, as evidenced by the appropriate entry on the stock register of the Company or its transfer agent, the Awardee will not have the rights of a stockholder with respect to those Award Shares, even though the Awardee has completed all the steps necessary to exercise the Award. No adjustment shall be made for any dividend, distribution, or other right for which the record date precedes the date the Award Shares are issued, except as provided in Section 10.

9.4 **Termination**

(a) ***In General.*** Except as provided in an Award Agreement or in writing by the Administrator, including in an Award Agreement, and as otherwise provided in Sections 9.4(b), (c), (d) and (e) after an Awardee's Termination for other than Cause, the Awardee's Awards shall be exercisable to the extent (but only to the extent) they are vested on the date of that Termination and only during the three months after the Termination, but in no event after the Expiration Date. Unless otherwise provided in the Award Agreement, in the event of termination for Cause the Award may not be exercised after the date of Termination. To the extent the Awardee does not exercise an Award within the time specified for exercise, the Award shall automatically terminate.

(b) ***Leaves of Absence***. Unless otherwise provided in the Award Agreement, no Award may be exercised more than three months after the beginning of a leave of absence, other than a personal or medical leave approved by an authorized representative of the Company with employment guaranteed upon return. Awards shall not continue to vest during a leave of absence, unless otherwise determined by the Administrator with respect to an approved personal or medical leave with employment guaranteed upon return.

(c) ***Death or Disability***. Unless otherwise provided by the Administrator, if an Awardee's Termination is due to death or disability (as determined by the

Administrator with respect to all Awards other than Incentive Stock Options and as defined by Section 22(e) of the Code with respect to Incentive Stock Options), all Awards of that Awardee to the extent exercisable at the date of that Termination may be exercised for one year after that Termination, but in no event after the Expiration Date. In the case of Termination due to death, an Award may be exercised as provided in Section 16. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for the Awardee and been granted this authority as part of that appointment, that guardian or conservator may exercise the Award on behalf of the Awardee. Death or disability occurring after an Awardee's Termination shall not cause the Termination to be treated as having occurred due to death or disability. To the extent an Award is not so exercised within the time specified for its exercise, the Award shall automatically terminate.

(d) ***Divestiture***. If an Awardee's Termination is due to a Divestiture, the Board may take any one or more of the actions described in Section 10.3 or 10.4 with respect to the Awardee's Awards.

(e) ***Administrator Discretion***. Notwithstanding the provisions of Section 9.4 (a)-(e), the Plan Administrator shall have complete discretion, exercisable either at the time an Award is granted or at any time while the Award remains outstanding, to:

(i) Extend the period of time for which the Award is to remain exercisable, following the Awardee's Termination, from the limited exercise period otherwise in effect for that Award to such greater period of time as the Administrator shall deem appropriate, but in no event beyond the Expiration Date; and/or

(ii) Permit the Award to be exercised, during the applicable post-Termination exercise period, not only with respect to the number of vested Shares for which such Award may be exercisable at the time of the Awardee's Termination but also with respect to one or more additional installments in which the Awardee would have vested had the Awardee not been subject to Termination.

(f) ***Consulting or Employment Relationship***. Nothing in this Plan or in any Award Agreement, and no Award or the fact that Award Shares remain subject to repurchase rights, shall: (A) interfere with or limit the right of the Company or any Affiliate to terminate the employment or consultancy of any Awardee at any time, whether with or without cause or reason, and with or without the payment of severance or any other compensation or payment, or (B) interfere with the application of any provision in any of the Company's or any Affiliate's charter documents or Applicable Law relating to the election, appointment, term of office, or removal of a Director.

10. **Certain Transactions and Events**

10.1 **In General**. Except as provided in this Section 10, no change in the capital structure of the Company, merger, sale or other disposition of assets or a subsidiary, change in control, issuance by the Company of shares of any class of securities or securities convertible into shares of any class of securities, exchange or conversion of securities, or other transaction or event shall require or be the occasion for any adjustments of the type described in this Section 10. Additional provisions with respect to the foregoing transactions are set forth in Section 13.3.

10.2 **Changes in Capital Structure**. In the event of any stock split, reverse stock split, recapitalization, combination or reclassification of stock, stock dividend, spin-off, or similar change to the capital structure of the Company (not including a Fundamental Transaction or Change in Control), the Board shall make whatever adjustments it concludes are appropriate to: (a) the number and type of Awards that may be granted under this Plan, (b) the number and type of Options that may be granted to any individual under this Plan, (c) the terms of any SAR, (d) the Purchase Price of any Stock Award, (e) the Option Price and number and class of securities issuable under each outstanding Option, and (f) the repurchase price of any securities substituted for Award Shares that are subject to repurchase rights. The specific adjustments shall be determined by the Board. Unless the Board specifies otherwise, any securities issuable as a result of any such adjustment shall be rounded down to the next lower whole security. The Board need not adopt the same rules for each Award or each Awardee.

10.3 **Fundamental Transactions**. In the event of (a) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Company or their relative stock holdings and the Awards granted under this Plan are assumed, converted or replaced by the successor corporation, which assumption shall be binding on all Participants), (b) a merger in which the Company is the surviving corporation but after which the stockholders of the Company immediately prior to such merger (other than any stockholder that merges, or which owns or controls another corporation that merges, with the Company in such merger) cease to own their shares or other equity interest in the Company, (c) the sale of all or substantially all of the assets of the Company, or (d) the acquisition, sale, or transfer of more than 50% of the outstanding shares of the Company by tender offer or similar transaction (each, a "***Fundamental Transaction***"), any or all outstanding Awards may be assumed, converted or replaced by the successor corporation (if any), which assumption, conversion or replacement shall be binding on all participants under this Plan. In the alternative, the successor corporation may substitute equivalent Awards or provide substantially similar consideration to participants as was provided to stockholders (after taking into account the existing provisions of the Awards). The successor corporation may also issue, in

place of outstanding Shares held by the participants, substantially similar shares or other property subject to repurchase restrictions no less favorable to the participant. In the event such successor corporation (if any) does not assume or substitute Awards, as provided above, pursuant to a transaction described in this Subsection 10.3, the vesting with respect to such Awards shall fully and immediately accelerate or the repurchase rights of the Company shall fully and immediately terminate, as the case may be, so that the Awards may be exercised or the repurchase rights shall terminate before, or otherwise in connection with the closing or completion of the Fundamental Transaction or event, but then terminate. Notwithstanding anything in this Plan to the contrary, the Committee may, in its sole discretion, provide that the vesting of any or all Award Shares subject to vesting or right of repurchase shall accelerate or lapse, as the case may be, upon a transaction described in this Section 10.3. If the Committee exercises such discretion with respect to Options, such Options shall become exercisable in full prior to the consummation of such event at such time and on such conditions as the Committee determines, and if such Options are not exercised prior to the consummation of the Fundamental Transaction, they shall terminate at such time as determined by the Committee. Subject to any greater rights granted to participants under the foregoing provisions of this Section 10.3, in the event of the occurrence of any Fundamental Transaction, any outstanding Awards shall be treated as provided in the applicable agreement or plan of merger, consolidation, dissolution, liquidation, or sale of assets.

10.4 **Changes of Control**. The Board may also, but need not, specify that other transactions or events constitute a "***Change in Control***". The Board may do that either before or after the transaction or event occurs. Examples of transactions or events that the Board may treat as Changes of Control are: (a) any person or entity, including a "group" as contemplated by Section 13(d)(3) of the Exchange Act, acquires securities holding 30% or more of the total combined voting power or value of the Company, or (b) as a result of or in connection with a contested election of Company Directors, the persons who were Company Directors immediately before the election cease to constitute a majority of the Board. In connection with a Change in Control, notwithstanding any other provision of this Plan, the Board may, but need not, take any one or more of the actions described in Section 10.3. In addition, the Board may extend the date for the exercise of Awards (but not beyond their original Expiration Date). The Board need not adopt the same rules for each Award or each Awardee. Notwithstanding anything in this Plan to the contrary, in the event of an Involuntary Termination of services for any reason other than death, disability or Cause, within 18 months following the consummation of a Fundamental Transaction or Change in Control, any Awards, assumed or substituted in a Fundamental Transaction or Change in Control, which are subject to vesting conditions and/or the right of repurchase in favor of the Company or a successor entity, shall accelerate for 12 months of vesting so that such Award Shares are immediately exercisable upon Termination or, if subject to the right of repurchase in favor of the Company, such repurchase rights shall lapse as of the date of Termination. Such Awards shall be exercisable for a period of three (3) months following termination.

10.5 **Divestiture**. If the Company or an Affiliate sells or otherwise transfers equity securities of an Affiliate to a person or entity other than the Company or an Affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board may specify that such transaction or event constitutes a "***Divestiture***". In connection with a Divestiture, notwithstanding any other provision of this Plan, the Board may, but need not, take one or more of the actions described in Section 10.3 or 10.4 with respect to Awards of Award Shares held by, for example, Employees, Directors or Consultants for whom that transaction or event results in a Termination. The Board need not adopt the same rules for each Award or Awardee.

10.6 **Dissolution**. If the Company adopts a plan of dissolution, the Board may cause Awards to be fully vested and exercisable (but not after their Expiration Date) before the dissolution is completed but contingent on its completion and may cause the Company's repurchase rights on Award Shares to lapse upon completion of the dissolution. The Board need not adopt the same rules for each Award or each Awardee. Notwithstanding anything herein to the contrary, in the event of a dissolution of the Company, to the extent not exercised before the earlier of the completion of the dissolution or their Expiration Date, Awards shall terminate immediately prior to the dissolution.

10.7 **Cut-Back to Preserve Benefits**. If the Administrator determines that the net after-tax amount to be realized by any Awardee, taking into account any accelerated vesting, termination of repurchase rights, or cash payments to that Awardee in connection with any transaction or event set forth in this Section 10 would be greater if one or more of those steps were not taken or payments were not made with respect to that Awardee's Awards or Award Shares, then, at the election of the Awardee, to such extent, one or more of those steps shall not be taken and payments shall not be made.

11. **Automatic Option Grants to Non-Employee Directors and Non-Employee Director Fee Option Grants**

11.1 **Automatic Option Grants to Non-Employee Directors.**

(a) **Grant Dates.** Option grants to Non-Employee Directors shall be made on the dates specified below:

(i) Each Non-Employee Director who is first elected or appointed to the Board at any time after the effective date of this Plan shall automatically be granted, on the date of such initial election or appointment, an Option to purchase 30,000 Shares (the "*Initial Grant*").

(ii) Commencing in 2005, on the date of each annual stockholders meeting, each individual who is to continue to serve as a Non-Employee Director shall automatically be granted an Option to purchase 10,000 Shares (the "*Annual*

Grant"), provided, however, that such individual has served as a Non-Employee Director for at least six (6) months.

(b) **Exercise Price.**

(i) The Option Price shall be equal to one hundred percent (100%) of the Fair Market Value of the Shares on the Option grant date.

(ii) The Option Price shall be payable in one or more of the alternative forms authorized pursuant to Section 6.4. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the Option Price must be made on the date of exercise.

(c) **Option Term.** Each Option shall have a term of ten (10) years measured from the Option grant date.

(d) **Exercise and Vesting of Options.** Except as otherwise determined by the whole Board, the Shares underlying each Option granted pursuant to Section 11.1 shall vest and be exercisable as set forth below.

(i) ***Initial Grant.*** The Shares underlying each Option issued pursuant to the Initial Grant shall vest and be exercisable as to 2.0833% of the Shares at the end of each full succeeding month from the date of grant, rounded down to the nearest whole Share, for so long as the Non-Employee Director continuously remains a Director of, or a Consultant to, the Company.

(ii) ***Annual Grant.*** The Shares underlying each Option issued pursuant to the Annual Grant shall vest and be exercisable as to 8.3333% of the Shares at the end of each full succeeding month from the date of grant, rounded down to the nearest whole Share, for so long as the Non-Employee Director continuously remains a Director of, or a Consultant to, the Company.

(e) **Termination of Service.** The following provisions shall govern the exercise of any Options held by the Awardee at the time the Awardee ceases to serve as a Non-Employee Director, Employee or Consultant:

(i) ***In General.*** Except as otherwise provided in Section 10.3, after cessation of service (the "*Cessation Date*"), the Awardee's Options shall be exercisable to the extent (but only to the extent) they are vested on the Cessation Date and only during the three months after such Cessation Date, but in no event after the Expiration Date. To the extent the Awardee does not exercise an Option within the time specified for exercise, the Option shall automatically terminate.

(ii) ***Death or Disability.*** If an Awardee's cessation of service is due to death or disability (as determined by the Board), all Options of that Awardee, to

the extent exercisable upon such Cessation Date, may be exercised for one year after the Cessation Date, but in no event after the Expiration Date. In the case of a cessation of service due to death, an Option may be exercised as provided in Section 16. In the case of a cessation of service due to disability, if a guardian or conservator has been appointed to act for the Awardee and been granted this authority as part of that appointment, that guardian or conservator may exercise the Option on behalf of the Awardee. Death or disability occurring after an Awardee's cessation of service shall not cause the cessation of service to be treated as having occurred due to death or disability. To the extent an Option is not so exercised within the time specified for its exercise, the Option shall automatically terminate.

(f) **Board Discretion.** The Awards under this Section 11.1 are not intended as the exclusive Awards that may be made to Non-Employee Directors under this Plan. The Board may, in its discretion, amend the Plan with respect to the terms of the Awards herein, may add or substitute other types of Awards or may temporarily or permanently suspend Awards hereunder, all without approval of the Company's stockholders.

11.2 **Director Fee Option Grants**

(a) **Option Grants.** The Board shall have the sole and exclusive authority to determine the calendar year or years for which the Director fee option grant program (the "*Director Fee Option Program*") is to be in effect. For each such calendar year the program is in effect, each Non-Employee Director may elect to apply all or any portion of the annual retainer fee otherwise payable in cash, for his or her service on the Board for that year, to the acquisition of a special Option grant under this Director Fee Option Program. Such election must be filed with the Company's Chief Financial Officer prior to first day of the calendar year for which the annual retainer fee which is the subject of that election is otherwise payable. Each Non-Employee Director who files such a timely election shall automatically be granted an Option under this Director Fee Option Program on the first trading day in January in the calendar year for which the annual retainer fee which is the subject of that election would otherwise be payable in cash.

(b) **Option Terms.** Each Option shall be a Nonstatutory Option governed by the terms and conditions specified below.

(i) ***Exercise Price.***

A. The Purchase Price shall be thirty-three and one-third percent (33-1/3%) of the Fair Market Value per Share on the Option grant date.

B. The Purchase Price shall become immediately due upon exercise of the Option and shall be payable in one or more of the alternative forms authorized pursuant to Section 6.4 of this Plan. Except to the extent the sale and

remittance procedure specified thereunder is utilized, payment of the Purchase Price must be made on the date that the Option is exercised.

(ii) ***Number of Option Shares.*** The number of Shares subject to the Option shall be determined pursuant to the following formula (rounded down to the nearest whole number):

X = A ÷ (B x 66-2/3%), where

X is the number of Option Shares,

A is the portion of the annual retainer fee subject to the Non-Employee Director's election, and

B is the Fair Market Value of a Share on the option grant date.

(iii) ***Exercise and Term of Options.*** The Option shall become exercisable in a series of twelve (12) equal monthly installments upon the Awardee's completion of each month of Board service over the twelve (12)-month period measured from the grant date. Each Option shall have a maximum term of ten (10) years measured from the Option grant date.

(iv) ***Termination of Board Service.*** Should the Awardee cease Board service for any reason (other than death or permanent disability) while holding one or more Options under this Director Fee Option Program, then each such Option shall remain exercisable, for any or all of the Shares for which the Option is exercisable at the time of such cessation of Board service, until the earlier of (x) the expiration of the ten (10)-year Option term or (y) the expiration of the three (3)-year period measured from the date of such cessation of Board service. However, each Option held by the Awardee under this Director Fee Option Program at the time of his or her cessation of Board service shall immediately terminate and cease to remain outstanding with respect to any and all Shares for which the Option is not otherwise at that time exercisable.

(v) ***Death or Permanent Disability.*** Should the Awardee's service as a Board member cease by reason of death or permanent disability, then each Option held by such Awardee under this Director Fee Option Program shall immediately become exercisable for all the Shares at the time subject to that Option, and the Option may be exercised for any or all of those Shares as fully-vested Shares until the earlier of (x) the expiration of the ten (10)-year option term or (y) the expiration of the three (3)-year period measured from the date of such cessation of Board service.

Should the Awardee die after cessation of his or her Board service but while holding one or more Options under this Director Fee Option Program, then each such Option may be exercised, for any or all of the shares for which the Option is exercisable

at the time of the Awardee's cessation of Board service (less any Shares subsequently purchased by the Awardee prior to death), by the personal representative of the Awardee's estate or by the person or persons to whom the Option is transferred pursuant to the Awardee's will or in accordance with the laws of descent and distribution or by the designated beneficiary or beneficiaries of such option. Such right of exercise shall lapse, and the Option shall terminate, upon the earlier of (xx) the expiration of the ten (10)-year Option term or (yy) the three (3)-year period measured from the date of the Awardee's cessation of Board service.

11.3 **Certain Transactions and Events**

(a) In the event of a Fundamental Transaction while the Awardee remains a Non-Employee Director, the Shares at the time subject to each outstanding Option held by such Awardee pursuant to Section 11, but not otherwise vested, shall automatically vest in full so that each such Option shall, immediately prior to the effective date of the Fundamental Transaction, become exercisable for all the Shares as fully vested Shares and may be exercised for any or all of those vested Shares. Immediately following the consummation of the Fundamental Transaction, each Option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or Affiliate thereof).

(b) In the event of a Change in Control while the Awardee remains a Non-Employee Director, the Shares at the time subject to each outstanding Option held by such Awardee pursuant to Section 11, but not otherwise vested, shall automatically vest in full so that each such Option shall, immediately prior to the effective date of the Change in Control, become exercisable for all the Shares as fully vested Shares and may be exercised for any or all of those vested Shares. Each such Option shall remain exercisable for such fully vested Shares until the expiration or sooner termination of the Option term in connection with a Change in Control.

(c) Each Option which is assumed in connection with a Fundamental Transaction shall be appropriately adjusted, immediately after such Fundamental Transaction, to apply to the number and class of securities which would have been issuable to the Awardee in consummation of such Fundamental Transaction had the Option been exercised immediately prior to such Fundamental Transaction. Appropriate adjustments shall also be made to the Option Price payable per share under each outstanding Option, provided the aggregate Option Price payable for such securities shall remain the same. To the extent the actual holders of the Company's outstanding Common Stock receive cash consideration for their Common Stock in consummation of the Fundamental Transaction, the successor corporation may, in connection with the assumption of the outstanding Options granted pursuant to Section 11, substitute one or more shares of its own common stock with a fair market value equivalent to the cash consideration paid per share of Common Stock in such Fundamental Transaction.

(d) The grant of Options pursuant to Section 11 shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

(e) The remaining terms of each Option granted pursuant to Section 11 shall, as applicable, be the same as terms in effect for Awards granted under this Plan. Notwithstanding the foregoing, the provisions of Section 9.4 and Section 10 shall not apply to Options granted pursuant to Section 11.

11.4 ***Limited Transferability of Options.*** Each Option granted pursuant to Section 11 may be assigned in whole or in part during the Awardee's lifetime to one or more members of the Awardee's family or to a trust established exclusively for one or more such family members or to an entity in which the Awardee is majority owner or to the Awardee's former spouse, to the extent such assignment is in connection with the Awardee 's estate or financial plan or pursuant to a Domestic Relations Order. The assigned portion may only be exercised by the person or persons who acquire a proprietary interest in the Option pursuant to the assignment. The terms applicable to the assigned portion shall be the same as those in effect for the Option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Administrator may deem appropriate. The Awardee may also designate one or more persons as the beneficiary or beneficiaries of his or her outstanding Options under Section 11, and those Options shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon the Awardee 's death while holding those Options. Such beneficiary or beneficiaries shall take the transferred Options subject to all the terms and conditions of the applicable Award Agreement evidencing each such transferred Option, including (without limitation) the limited time period during which the Option may be exercised following the Awardee's death.

12. **Withholding and Tax Reporting**

12.1 **Tax Withholding Alternatives**

(a) ***General***. Whenever Award Shares are issued or become free of restrictions, the Company may require the Awardee to remit to the Company an amount sufficient to satisfy any applicable tax withholding requirement, whether the related tax is imposed on the Awardee or the Company. The Company shall have no obligation to deliver Award Shares or release Award Shares from an escrow or permit a transfer of Award Shares until the Awardee has satisfied those tax withholding obligations. Whenever payment in satisfaction of Awards is made in cash, the payment will be reduced by an amount sufficient to satisfy all tax withholding requirements.

(b) ***Method of Payment***. The Awardee shall pay any required withholding using the forms of consideration described in Section 6.4(b), except that, in the discretion

of the Administrator, the Company may also permit the Awardee to use any of the forms of payment described in Section 6.4(c). The Administrator, in its sole discretion, may also permit Award Shares to be withheld to pay required withholding. If the Administrator permits Award Shares to be withheld, the Fair Market Value of the Award Shares withheld, as determined as of the date of withholding, shall not exceed the amount determined by the applicable minimum statutory withholding rates.

12.2 **Reporting of Dispositions.** Any holder of Option Shares acquired under an Incentive Stock Option shall promptly notify the Administrator, following such procedures as the Administrator may require, of the sale or other disposition of any of those Option Shares if the disposition occurs during: (a) the longer of two years after the Grant Date of the Incentive Stock Option and one year after the date the Incentive Stock Option was exercised, or (b) such other period as the Administrator has established.

13. **Compliance with Law**

The grant of Awards and the issuance and subsequent transfer of Award Shares shall be subject to compliance with all Applicable Law, including all applicable securities laws. Awards may not be exercised, and Award Shares may not be transferred, in violation of Applicable Law. Thus, for example, Awards may not be exercised unless: (a) a registration statement under the Securities Act is then in effect with respect to the related Award Shares, or (b) in the opinion of legal counsel to the Company, those Award Shares may be issued in accordance with an applicable exemption from the registration requirements of the Securities Act and any other applicable securities laws. The failure or inability of the Company to obtain from any regulatory body the authority considered by the Company's legal counsel to be necessary or useful for the lawful issuance of any Award Shares or their subsequent transfer shall relieve the Company of any liability for failing to issue those Award Shares or permitting their transfer. As a condition to the exercise of any Award or the transfer of any Award Shares, the Company may require the Awardee to satisfy any requirements or qualifications that may be necessary or appropriate to comply with or evidence compliance with any Applicable Law.

14. **Amendment or Termination of this Plan or Outstanding Awards**

14.1 **Amendment and Termination**. The Board may at any time amend, suspend, or terminate this Plan.

14.2 **Stockholder Approval**. The Company shall obtain the approval of the Company's stockholders for any amendment to this Plan if stockholder approval is necessary or desirable to comply with any Applicable Law or with the requirements applicable to the grant of Awards intended to be Incentive Stock Options. The Board

may also, but need not, require that the Company's stockholders approve any other amendments to this Plan.

14.3 **Effect.** No amendment, suspension, or termination of this Plan, and no modification of any Award even in the absence of an amendment, suspension, or termination of this Plan, shall impair any existing contractual rights of any Awardee unless the affected Awardee consents to the amendment, suspension, termination, or modification. Notwithstanding anything herein to the contrary, no such consent shall be required if the Board determines, in its sole and absolute discretion, that the amendment, suspension, termination, or modification: (a) is required or advisable in order for the Company, this Plan or the Award to satisfy Applicable Law, to meet the requirements of any accounting standard or to avoid any adverse accounting treatment, or (b) in connection with any transaction or event described in Section 10, is in the best interests of the Company or its stockholders. The Board may, but need not, take the tax or accounting consequences to affected Awardees into consideration in acting under the preceding sentence. Those decisions shall be final, binding and conclusive. Termination of this Plan shall not affect the Administrator's ability to exercise the powers granted to it under this Plan with respect to Awards granted before the termination of Award Shares issued under such Awards even if those Award Shares are issued after the termination.

15. **Reserved Rights**

15.1 **Nonexclusivity of this Plan.** This Plan shall not limit the power of the Company or any Affiliate to adopt other incentive arrangements including, for example, the grant or issuance of stock options, stock, or other equity-based rights under other plans.

15.2 **Unfunded Plan.** This Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Awardees, any such accounts will be used merely as a convenience. The Company shall not be required to segregate any assets on account of this Plan, the grant of Awards, or the issuance of Award Shares. The Company and the Administrator shall not be deemed to be a trustee of stock or cash to be awarded under this Plan. Any obligations of the Company to any Awardee shall be based solely upon contracts entered into under this Plan, such as Award Agreements. No such obligations shall be deemed to be secured by any pledge or other encumbrance on any assets of the Company. Neither the Company nor the Administrator shall be required to give any security or bond for the performance of any such obligations.

16. **Special Arrangements Regarding Award Shares**

16.1 **Escrow of Stock Certificates**. To enforce any restrictions on Award Shares, the Administrator may require their holder to deposit the certificates representing Award Shares, with stock powers or other transfer instruments approved by the Administrator endorsed in blank, with the Company or an agent of the Company to hold

in escrow until the restrictions have lapsed or terminated. The Administrator may also cause a legend or legends referencing the restrictions to be placed on the certificates.

16.2 **Repurchase Rights**

(a) ***General***. If a Stock Award is subject to vesting conditions, the Company shall have the right, during the seven months after the Awardee's Termination, to repurchase any or all of the Award Shares that were unvested as of the date of that Termination. The repurchase price shall be determined by the Administrator in accordance with this Section 16.2 which shall be either (i) the Purchase Price for the Award Shares (minus the amount of any cash dividends paid or payable with respect to the Award Shares for which the record date precedes the repurchase) or (ii) the lower of (A) the Purchase Price for the Shares or (B) the Fair Market Value of those Award Shares as of the date of the Termination. The repurchase price shall be paid in cash. The Company may assign this right of repurchase.

(b) ***Procedure***. The Company or its assignee may choose to give the Awardee a written notice of exercise of its repurchase rights under this Section 16.2. However, the Company's failure to give such a notice shall not affect its rights to repurchase Award Shares. The Company must, however, tender the repurchase price during the period specified in this Section 16.2 for exercising its repurchase rights in order to exercise such rights.

17. **Beneficiaries**

An Awardee may file a written designation of one or more beneficiaries who are to receive the Awardee's rights under the Awardee's Awards after the Awardee's death. An Awardee may change such a designation at any time by written notice. If an Awardee designates a beneficiary, the beneficiary may exercise the Awardee's Awards after the Awardee's death. If an Awardee dies when the Awardee has no living beneficiary designated under this Plan, the Company shall allow the executor or administrator of the Awardee's estate to exercise the Award or, if there is none, the person entitled to exercise the Option under the Awardee's will or the laws of descent and distribution. In any case, no Award may be exercised after its Expiration Date.

18. **Miscellaneous**

18.1 **Governing Law.** This Plan, the Award Agreements and all other agreements entered into under this Plan, and all actions taken under this Plan or in connection with Awards or Award Shares, shall be governed by the laws of the State of Delaware.

18.2 **Determination of Value**. Fair Market Value shall be determined as follows:

(a) ***Listed Stock***. If the Shares are traded on any established stock exchange or quoted on a national market system, Fair Market Value shall be the closing sales price for the Shares as quoted on that stock exchange or system for the date the value is to be determined (the "***Value Date***") as reported in *The Wall Street Journal* or a similar publication. If no sales are reported as having occurred on the Value Date, Fair Market Value shall be that closing sales price for the last preceding trading day on which sales of Shares are reported as having occurred. If no sales are reported as having occurred during the five trading days before the Value Date, Fair Market Value shall be the closing bid for Shares on the Value Date. If Shares are listed on multiple exchanges or systems, Fair Market Value shall be based on sales or bid prices on the primary exchange or system on which Shares are traded or quoted.

(b) ***Stock Quoted by Securities Dealer***. If Shares are regularly quoted by a recognized securities dealer but selling prices are not reported on any established stock exchange or quoted on a national market system, Fair Market Value shall be the mean between the high bid and low asked prices on the Value Date. If no prices are quoted for the Value Date, Fair Market Value shall be the mean between the high bid and low asked prices on the last preceding trading day on which any bid and asked prices were quoted.

(c) ***No Established Market***. If Shares are not traded on any established stock exchange or quoted on a national market system and are not quoted by a recognized securities dealer, the Administrator (following guidelines established by the Board or Committee) will determine Fair Market Value in good faith. The Administrator will consider the following factors, and any others it considers significant, in determining Fair Market Value: (i) the price at which other securities of the Company have been issued to purchasers other than Employees, Directors, or Consultants, (ii) the Company's stockholder's equity, prospective earning power, dividend-paying capacity, and non-operating assets, if any, and (iii) any other relevant factors, including the economic outlook for the Company and the Company's industry, the Company's position in that industry, the Company's goodwill and other intellectual property, and the values of securities of other businesses in the same industry.

18.3 **Reservation of Shares.** During the term of this Plan, the Company shall at all times reserve and keep available such number of Shares as are still issuable under this Plan.

18.4 **Electronic Communications.** Any Award Agreement, notice of exercise of an Award, or other document required or permitted by this Plan may be delivered in writing or, to the extent determined by the Administrator, electronically. Signatures may also be electronic if permitted by the Administrator.

18.5 **Notices.** Unless the Administrator specifies otherwise, any notice to the Company under any Option Agreement or with respect to any Awards or Award Shares shall be in writing (or, if so authorized by Section 17.4, communicated electronically), shall be addressed to the Secretary of the Company, and shall only be effective when received by the Secretary of the Company.

Exhibit 10.4

SUBLEASE

THIS SUBLEASE (“Sublease”) is dated for references purposes only as of December 5, 2002, and is entered by and between **THERAVANCE, INC.,** a Delaware corporation **(“Sublessor”),** and **THRESHOLD PHARMACEUTICALS, INC.,** a Delaware corporation (“**Sublessee**”). Sublessor and Sublessee hereby agree as follows:

1. RECITALS. HMS Gateway Office L.P., a Delaware limited partnership, predecessor-in-interest to ARE-901/951 Gateway Boulevard, LLC, a Delaware limited liability company (“Master Lessor”), as Landlord, and Sublessor, under its former name of Advanced Medicine, Inc., as Tenant, entered that certain Lease Agreement, dated January 1, 2001 (“Master Lease”), with respect to certain premises consisting of approximately sixty thousand (60,000) rentable square feet of space (“Premises”) comprising that certain building (“Building”) located at 951 Gateway Boulevard, South San Francisco, California 94080. A partially redacted copy of the Master Lease is attached hereto as Exhibit A and incorporated by reference herein.

2. SUBLEASE; SUBLEASED PREMISES. Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, that portion of the Premises consisting of approximately ten thousand five hundred nine (10,509) rentable square feet comprised of the unoccupied portion of the Premises located on the third floor of the Building (“Subleased Premises”). The Subleased Premises are more particularly described on Exhibit B attached hereto and incorporated by reference herein. Sublessee shall additionally have the right to use of and access to Sublessee’s Share (as defined in Paragraph 4.B. below) of the warehouse and biohazardous waste areas of the Premises, as more particularly set forth herein, and the right to use in common with Sublessor and other tenants of the Building the lobby areas of the Premises. Sublessee shall have the right to warehouse within the warehouse area those items which are shipped to Sublessee, and shall have the right to retrieve such items from the warehouse area during the normal business hours of Sublessor, and subject to Sublessor’s reasonable security measures. Sublessor shall not unpack or otherwise alter any of the original packaging of any item received or stored in the warehouse area by Sublessee. Sublessee’s use of the biohazardous waste area is in conjunction with the services to be provided by Sublessor as detailed in Section 30 and Exhibit E. The parties agree that while Sublessee will not use the biohazardous waste area for its own operations. Sublessee and its employees, agents and contractors shall be obligated to remove any biohazardous waste from the biohazardous waste area for disposal. Sublessee shall arrange for removal of any biohazardous waste from the biohazardous waste area during Sublessor’s normal business hours and subject to Sublessor’s reasonable security measures.

3. TERM.

A. Term. The term **(“Term”)** of this Sublease shall commence on the later of (i) the date on which Sublessor has received Master Lessor’s written consent to this Sublease, and (ii) January 1, 2003 (“Commencement Date”). The term of this Sublease shall expire on December 31, 2004 (“Expiration Date”), unless sooner terminated pursuant to the provisions hereof or pursuant to the provisions of the Master Lease.

B. Delay in Delivery of Possession. Sublessor shall use commercially reasonable efforts to deliver possession of the Subleased Premises on the Commencement Date. If Sublessor is unable to deliver possession of the Subleased Premises in the required condition to Sublessee on the Commencement Date for any reason whatsoever, Sublessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Sublease or the obligations of Sublessee hereunder, or extend the Term, but in such case Sublessee shall not be obligated to pay Rent (as defined in Paragraph 4.C. below) or perform any other obligation of Sublessee hereunder until Sublessor delivers possession of the Subleased Premises to Sublessee in the required condition. Sublessor and Sublessee shall execute a Commencement Date memorandum establishing the Commencement Date and the Expiration Date promptly after the Commencement Date has been established. Sublessee's failure to execute a Commencement Date memorandum shall not affect the validity of this Sublease. Notwithstanding anything to the contrary contained herein, if Sublessor has not delivered the Subleased Premises in the required condition to Sublessee on or before January 15, 2003, then Sublessee shall have the right thereafter to cancel this Sublease, and upon such cancellation, Sublessor shall return to Sublessee the Letter of Credit and all sums theretofore deposited by Sublessee with Sublessor, and neither party shall have any further liability to the other. The foregoing shall be Sublessee's sole and exclusive remedy in the event of a termination pursuant to this Paragraph.

C. Early Entry. Notwithstanding anything to the contrary contained in this Sublease, for the period commencing with the date of Master Lessor's consent to this Sublease (if Master Lessor's consent is obtained prior to January 1, 2003) through December 31, 2002, Sublessee shall have access to the Premises, without any obligation to pay Rent hereunder but subject to all other terms and conditions of this Sublease, for the purpose of installing its data, telephone and telecommunications cabling and wiring, furniture, fixtures and equipment. During such early occupancy period, Sublessee shall also have the right to allow its employees to set-up individual cubicle areas and to install and check computers and other equipment. In exercising the foregoing early entry right, Sublessee shall use reasonable efforts not to interfere with Sublessor's construction of the Demising Improvements and the Sublessor Improvements (as defined in Paragraph 14 below).

4. RENT.

A. Monthly Base Rent. Commencing on the Commencement Date and continuing on the first day of each calendar month during the Term, Sublessee shall pay to Sublessor monthly base rent ("Monthly Base Rent") for the Subleased Premises as follows:

(i) For months one (1) through twelve (12) of the Term, Sublessee shall pay Monthly Base Rent in the amount of $1.03 per rentable square foot, or $10,824.27 per month.

(ii) For months thirteen (13) through twenty-four (24) of the Term, Sublessee shall pay Monthly Base Rent in the amount of $1.23 per rentable square foot, or $12,926.07 per month.

As used herein, "month" shall mean a period beginning on the first (1st) day of a calendar month and ending on the last day of that month. Monthly Base Rent shall be paid on or before the first

(1st) day of each month. Rent for any period during the Term hereof which is for less than one month of the Term shall be a prorata portion of the monthly installment based on a 30-day month. Rent shall be payable without notice or demand and without any deduction, offset, or abatement, in lawful money of the United States of America. Rent shall be paid directly to Sublessor at the address stated below or to such other persons or at such other places as Sublessor may designate from, time to time to Sublessee in writing.

B. Additional Rent. In addition to Monthly Base Rent, Sublessee shall pay to Sublessor, at the time that Sublessee pays Monthly Base Rent or, if otherwise so notified by Sublessor in writing, within twenty (20) days after receipt of Sublessor's invoice therefor, Sublessee's share of "Tenant's Proportionate Share" of all "Additional Rent" (as defined in Section 4.2 of the Master Lease) ("Sublessee's Share"), including, without limitation, Taxes and Assessments, Insurance, Utilities, Common Area Expenses, Parking Charges, Maintenance and Repair Costs, Life Safety Costs, Management and Administration, Operational Fees Related to Expansion Approvals and Gateway Operational Expenses, all as more particularly described in Section 4.2. of the Master Lease, payable by Sublessor under the Master Lease. Notwithstanding the foregoing or anything to the contrary in this Sublease, Sublessee shall not be required to pay any Additional Rent or to perform any obligation that is (1) fairly allocable to any period of time prior to the Commencement Date or following the expiration or sooner termination of this Sublease (for any reason other than Sublessee's default), (2) fairly allocable to any portion of the Premises other than the Subleased Premises, (3) payable as a result of a default by Sublessor of any of its obligations under the Master Lease, or as a result of the negligence or willful misconduct of Sublessor or any of its agents, employees, or contractors, or (4) incurred for the sole benefit of Sublessor. Sublessee's Share shall be seventeen and fifty-two hundredths percent (17.52%), which is determined by dividing the square footage of the Subleased Premises (10,509 rentable square feet) by the square footage of the Premises (60,000 rentable square feet). Notwithstanding the foregoing, Sublessee's Share of "Tenant's Proportionate Share" of "Additional Rent" conclusively is established for purposes of this Sublease at $0.34 per rentable square foot per month for each month during the Term.

Commencing on the Commencement Date and continuing for each month during the Term, Sublessee shall pay to Sublessor Sublessee's Share for the Subleased Premises in the amount of $0.34 per rentable square foot, or $3,537.06 per month.

In addition, Sublessee shall be responsible for payment directly to the provider for Sublessee's telephone, data and telecommunications costs, fees, charges and expenses, and Sublessee's personal property taxes as set forth in Article 28 of the Master Lease; provided, however, that Sublessee shall not be responsible for payment of personal property taxes on Furniture or Equipment being leased by Sublessee from Sublessor pursuant to Paragraph 30.B below.

C. Rent. All monies required to be paid by Sublessee under this Sublease (except for Monthly Base Rent, as defined in Paragraph 4.A. above), including all other payment obligations imposed by the Master Lease with respect to the Subleased Premises and incorporated by reference herein, shall be deemed additional sublease rent ("Additional Sublease Rent"). Monthly Base Rent and Additional Sublease Rent (including the Reimbursements defined in Paragraph 30.D. below) hereinafter collectively shall be referred to as "Rent." A schedule showing the Monthly Base Rent and Additional Sublease Rent payable by Sublessee

during the Term is attached hereto as **Exhibit F** and incorporated by reference herein, and the parties expressly agree that **Exhibit F** sets forth the total capped amounts to be paid by Sublessee under this Sublease; Sublessee's payment obligations for Monthly Base Rent and Additional Sublease Rent pursuant to this Sublease shall neither exceed nor be less than the amounts set forth on **Exhibit F.**

D. Payment of First Month's Rent. Upon the execution of this Sublease by Sublessee and Sublessor and Master Lessor's Consent, Sublessee shall pay to Sublessor the sum of $37,306.95, which sum shall constitute Monthly Base Rent and Additional Sublease Rent (including Reimbursements) for the Subleased Premises for the first month of the Term.

5. LETTER OF CREDIT.

A. Requirements. Within five (5) days after the execution of this Sublease by Sublessor and Sublessee, Sublessee shall deliver to Sublessor an unconditional, irrevocable, renewable and transferable letter of credit in favor of Sublessor in a form reasonably approved by Sublessor, issued by a federally-insured bank with a branch located within fifty (50) miles of the Subleased Premises that is otherwise reasonably acceptable to Sublessor (the "Issuing Bank"), in the amount of $85,000.00 ("Stated Amount"), to be held by Sublessor in accordance with the terms, provisions and conditions of this Sublease. The Letter of Credit shall state that an authorized officer or other representative of Sublessor may make demand on Sublessor's behalf for the Stated Amount of the Letter of Credit, or any portion thereof, from time to time, and that the Issuing Bank must immediately honor such demand, without qualification or satisfaction of any conditions except the proper identification of the party making such demand, accompanied by the original Letter of Credit and a written statement signed by such party certifying that (i) such amount is due and owing under the Sublease as a result of a default, beyond applicable notice and cure periods, under one or more provisions of the Sublease, or (ii) Sublessor has received the Issuing Bank's notice of non-renewal of the Letter of Credit. The Letter of Credit shall provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one year each thereafter through the date that is thirty (30) days after the Expiration Date unless the Issuing Bank sends a notice ("Non-Renewal Notice") to Sublessor by certified mail, return receipt requested, not less than sixty (60) days prior to the next expiration date of the Letter of Credit stating that the Issuing Bank has elected not to renew the Letter of Credit. Sublessor shall have the right, upon receipt of the Non-Renewal Notice, to draw the full amount of the Letter of Credit, by sight draft on the Issuing Bank, and shall thereafter hold or apply the cash proceeds of the Letter of Credit pursuant to the terms of this Paragraph until Sublessee delivers to Sublessor a substitute Letter of Credit which meets the requirements of this Paragraph. If (i) a default beyond any applicable notice and cure period occurs in the payment or performance of any of the terms, covenants or conditions of this Sublease, including, without limitation, the payment of Rent (it being understood that no notice of a default by Sublessee hereunder need be given by Sublessor to Sublessee if Sublessee is the subject of a bankruptcy proceeding), or (ii) Sublessor receives a Non-Renewal Notice and Sublessee does not provide a substitute Letter of Credit satisfying the requirements of this Paragraph 5. A within ten (10) business days following the date of such Non-Renewal Notice, or (iii) if Sublessee files a voluntary petition under Title 11 of the United States Bankruptcy Code or otherwise becomes a debtor in any case or proceeding under the United States Bankruptcy Code, as now existing or hereafter amended, or any similar law or statute, then Sublessor may

notify the Issuing Bank in writing that the event described in (i), (ii) or (iii) above has occurred and thereupon receive all or such portion of the Stated Amount as is then available, and so long as such default is continuing or a replacement Letter of Credit has not been provided, Sublessor shall have the right to use such proceeds (and the proceeds received from such draw shall constitute Sublessor's property [and not Sublessee's property or the property of the bankruptcy estate of Sublessee]) for the uses hereinbelow authorized, and use, apply, or retain the whole or any part of such proceeds, as the case may be, to the extent required for the payment of any Rent or any other sum as to which Sublessee is in default, including, but not limited to (a) any sum which Sublessor may expend or may be required to expend by reason of the default, and/or (b) any damages to which Sublessor is entitled pursuant to this Sublease, whether such damages accrue before or after summary proceedings or other reentry by Sublessor. If Sublessor applies or retains any part of the Stated Amount, Sublessee, within ten (10) business days after receipt of demand, shall deposit with Sublessor the amount so applied or retained so that Sublessor shall have the full Stated Amount on hand at all times during the Term, and Sublessee's failure to do so shall be an additional default hereunder without any obligation of Sublessor to provide an additional notice or cure period. If Sublessee shall fully and faithfully comply with all of the terms, covenants and conditions of this Sublease, the Letter of Credit (or so much thereof as remains after Sublessor has been adequately compensated for damages due to Sublessee's failure to comply fully with the terms, covenants and conditions of this Sublease) shall be returned to Sublessee not later than the date that is thirty (30) days after the Expiration Date. Sublessee shall be responsible for payment of any set-up fees and draw-down costs and fees associated with the Letter of Credit, but shall not be responsible for any transfer costs or fees. Notwithstanding anything contained in this Paragraph to the contrary, if for any reason Sublessor draws on the Letter of Credit, then Sublessee shall have the right, upon ten (10) days' prior written notice to Sublessor, to obtain a refund from Sublessor of any unapplied proceeds of the Letter of Credit which Sublessor has drawn upon, any such refund being conditioned upon Sublessee simultaneously delivering to Sublessor a new replacement Letter of Credit in the amount of the original Letter of Credit, and otherwise meeting the requirements of this Paragraph.

B. Sublessor's Rights. Sublessor shall not be required to keep any proceeds from the Letter of Credit separate from its general funds. If Sublessor assigns its interest in this Sublease, Sublessor shall assign the Letter of Credit to such transferee (or cause Sublessee [at no cost to Sublessee] to cause the Issuing Bank to issue a replacement letter of credit to such transferee), and if such transferee accepts in writing Sublessor's obligations under this Sublease, thereupon Sublessor shall be discharged from any further liability with respect to the Letter of Credit and said proceeds and Sublessee shall look solely to such transferee for the return of the Letter of Credit or any proceeds therefrom. The costs associated with any permitted transfer of the Letter of Credit shall be paid by Sublessor. The use, application or retention of the Letter of Credit, or the proceeds or any portion thereof, shall not prevent Sublessor from exercising any other rights or remedies provided under this Sublease, it being intended that Sublessor shall not be required to proceed against the Letter of Credit, and such use, application or retention of the Letter of Credit shall not operate as a limitation on any recovery to which Sublessor may otherwise be entitled. No trust relationship is created herein between Sublessor and Sublessee with respect to the Letter of Credit or any proceeds thereof. Sublessor and Sublessee acknowledge and agree that in no event shall the Letter of Credit, any renewal thereof or substitute therefor or the proceeds thereof be (i) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (ii) subject to the terms of such

Section 1950.7, or (iii) intended to serve as a "security deposit" within the meaning of such Section 1950.7. The parties hereto (A) recite that neither the Letter of Credit nor any proceeds thereof is intended to serve as a security deposit, and such Section 1950.7 and any and all other laws, rules and regulations applicable to security deposits in the commercial context shall have no applicability or relevancy thereto, and (B) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from such laws, rules and regulations.

6. PARKING. Subject to Sublessee's compliance with the provisions of Section 50 of the Master Lease, Sublessee shall be entitled to the non-exclusive use of twenty-eight (28) parking spaces in the Designated Parking Areas serving the Building.

7. CONDITION OF THE SUBLEASED PREMISES. On the Commencement Date, Sublessor shall deliver the Subleased Premises to Sublessee in "move-in" condition, broom- clean, with all building systems and equipment serving the Subleased Premises in good working order, and in compliance with all applicable governmental codes and regulations (including, without limitation the Americans with Disabilities Act of 1990 ["ADA"]), but otherwise in its "as-is, with all faults condition", subject, however to the provisions of Paragraphs 14.B., 31 and 35 below. Notwithstanding anything to the contrary contained in this Sublease, Sublessor warrants that, to the best of its actual knowledge as of the Commencement Date, Sublessor has not received any notice, written or verbal, from any governmental authority with jurisdiction over the Premises that the Subleased Premises are not in compliance with any laws, codes, ordinances or other governmental requirements then applicable to the Premises, the Building or the Project Sublessee acknowledges that, except as expressly set forth herein, neither Sublessor nor any agent of Sublessor has made any representation or warranty with respect to the Subleased Premises or with respect to the suitability of any part of the Subleased Premises for the conduct of Sublessee's business. Sublessee hereby accepts the Subleased Premises and Building and all improvements thereon, subject, however, to all applicable laws governing and regulating the use of the Subleased Premises and any covenants or restrictions of record, and accepts this Sublease subject to all of the foregoing and to all matters disclosed in this Sublease. Sublessee acknowledges that neither Sublessor nor Sublessor's agents has made any representation or warranty as to the present or future suitability of the Subleased Premises for the conduct of Sublessee's business or the uses proposed by Sublessee.

Sublessor shall continue to have obligations as the tenant under the Master Lease with respect to any alterations, improvements or repairs to the Subleased Premises (other than alterations or improvements installed by Sublessee, the obligations for which shall be Sublessee's), including, without limitation, any improvement or repair required to comply with any law, regulation, building code or ordinance (including, without limitation, the ADA); provided, however, that to the extent any of the foregoing items are the responsibility of Master Lessor under the Master Lease, Sublessor's sole responsibilities shall be (i) to notify Master Lessor in writing of the need to perform such obligations, (ii) to use commercially reasonable efforts to cause Master Lessor to comply with such obligations, and (iii) without delay to exercise such rights and remedies under the Master Lease as are available to Sublessor in the event that Master Lessor fails to perform such obligations; provided, however, that with respect to the Subleased Premises, the foregoing responsibilities of Sublessor shall be at the sole cost and expense of Sublessee.

8. INDEMNIFICATION.

A. Sublessee's Indemnification. In addition to the indemnifications set forth in the Master Lease which are incorporated by reference pursuant to Section 24.A. below, including, without limitation, Sections 9.3, 11.3, 16.1 and 32.10 thereof, and except to the extent caused by Sublessor's negligence or willful misconduct, Sublessee shall indemnify, protect, defend with counsel reasonably acceptable to Sublessor and Master Lessor and hold harmless Sublessor and Master Lessor from and against any and all claims, liabilities, judgments, causes of action, actual out-of-pocket damages (excluding punitive and consequential damages [i.e., lost profits, lost business opportunity]), costs and expenses (including reasonable attorneys' and experts' fees), caused by or arising in connection with: (i) the act, omission, negligence or willful misconduct of Sublessee or its employees, contractors, agents, sublessees, or assignees, or (ii) a breach of Sublessee's obligations under this Sublease; or (iii) a breach of Sublessee's obligations under the Master Lease to the extent incorporated herein with respect to the Subleased Premises, or (iv) a removal of the Furniture or Equipment from the Subleased Premises as a result of any act, omission, failure to act, negligence or willful misconduct by Sublessee (not caused by Sublessor). The foregoing indemnification shall survive the expiration or earlier termination of this Sublease.

B. Sublessor's Indemnification. Except to the extent caused by the negligence or willful misconduct of Sublessee, its agents, employees, contractors, sublessees or invitees, Sublessor shall indemnify, protect, defend with counsel reasonably acceptable to Sublessee and hold harmless Sublessee from and against any and all claims, liabilities, judgments, causes of action, actual out-of-pocket damages (excluding punitive and consequential damages [i.e., lost profits, lost business opportunity]), costs and expenses (including reasonable attorneys' and experts' fees), caused by or arising in connection with: (i) the act, omission, negligence or willful misconduct of Sublessor or its employees, contractors, agents, licensees, invitees or assignees in the Building, or (ii) a breach of Sublessor's obligations under this Sublease; or (iii) a breach of Sublessor's obligations under the Master Lease to the extent those obligations are not the obligation of Sublessee as incorporated herein with respect to the Subleased Premises, or (iv) a removal from the Subleased Premises of any of the Equipment or Furniture as a result of any default by Sublessor (not caused by Sublessee) under any equipment financing agreement or other arrangement, or (v) a termination of this Sublease as a result of a default (not caused by Sublessee) by Sublessor under the Master Lease. The foregoing indemnification shall survive the expiration or earlier termination of this Sublease.

9. RIGHT TO CURE DEFAULTS. If Sublessee fails to pay any sum of money when due to Sublessor, or fails to perform any other act on its part to be performed hereunder, then Sublessor may, but shall not be obligated to, upon three (3) business days' prior written notice to Sublessee, make such payment or perform such act. All such sums paid, and all costs and expenses of performing any such act, shall be deemed Additional Sublease Rent payable by Sublessee to Sublessor upon demand, together with interest thereon at the maximum rate permitted by law from the date of the expenditure until repaid.

10. ASSIGNMENT AND SUBLETTING.

A. Conditions. Except in strict accordance with the provisions of Article 23 of the Master Lease, Sublessee shall not have the right to assign this Sublease, sublease the Subleased Premises, transfer any interest of Sublessee therein, or permit any use of the Subleased Premises by another party ("Transfer") without the prior written consent of Sublessor, which consent shall not be unreasonably withheld, conditioned or delayed, and the consent of Master Lessor. Sublessee acknowledges that Section 28.3 of the Master Lease provides that any sublessee of Sublessor shall not have a right to further assign or sublet the Subleased Premises, but Sublessor shall use reasonable good faith efforts to cooperate with Sublessee in attempting to obtain Master Lessor's consent to any further sublease or assignment by Sublessee. Sublessor shall not unreasonably withhold or delay its consent to a requested assignment or sublease proposed by Sublessee, but the foregoing agreement of Sublessor shall not be deemed to relieve Sublessee of the obligation to obtain Master Lessor's consent thereto, and if Master Lessor refuses its consent to any further assignment or sublease by Sublessee, Sublessor's consent shall be deemed null and void and of no force or effect. Any Transfer without the consents required by this Paragraph shall be void and shall, at the option of Sublessor, terminate this Sublease. Sublessor's consent to any assignment or subletting shall be ineffective unless set forth in writing, and Sublessee shall not be relieved from any of its obligations under this Sublease unless the consent expressly so provides.

B. Excess Rents. Except for a Permitted Transfer (as defined in Section 23.4 of the Master Lease), if Sublessor and Master Lessor approve an assignment or subletting, Sublessee shall pay to Sublessor, as Additional Sublease Rent, one hundred percent (100%) of the Transfer Profits, as defined in Section 23.5 of the Master Lease.

C. Sublessor's Recapture Right. Notwithstanding anything to the contrary contained in this Sublease or the Master Lease, in the event of a proposed Transfer (other than a Permitted Transfer) of substantially all of the Subleased Premises for substantially all of the remaining Term, Sublessor shall have the right to recapture the Subleased Premises, in which case this Sublease shall terminate as to all of the Subleased Premises.

11. USE. Sublessee may use the Subleased Premises only for general office and research and development activities associated with biotechnology/pharmaceutical services, as set forth in the "Permitted Use" section of the Basic Lease Information of the Master Lease and in Article 9 of the Master Lease (to the extent incorporated into this Sublease), and for no other purposes. The use of the Subleased Premises by Sublessee shall be in accordance with all applicable law. Sublessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction, or going out of business, fire or bankruptcy sale upon the Subleased Premises without first having obtained Sublessor's prior written consent. Sublessee, at Sublessee's sole cost and expense, shall obtain and maintain in force during the Term of this Sublease all permits, licenses and approvals required or necessary for the conduct of the activities of Sublessee on the Subleased Premises. Sublessee shall comply with all rules and regulations promulgated from time to time by Master Lessor.

12. EFFECT OF CONVEYANCE. AS used in this Sublease, the term "Sublessor" means the holder of the tenant's interest under the Master Lease. In the event of any transfer of said tenant's interest, as of the date of such transfer Sublessor shall be and hereby is entirely relieved of all covenants and obligations of the Sublessor hereunder accruing after the date of the transfer,

and it shall be deemed and construed, without further agreement between the parties, that the transferee has assumed and shall carry out all covenants and obligations to be performed by Sublessor hereunder from and after the date of the transfer. Sublessor shall transfer and deliver any security of Sublessee to the transferee of said tenant's interest in the Master Lease, and thereupon the Sublessor shall be discharged from any further liability with respect thereto.

13. ACCEPTANCE. The parties acknowledge and agree that Sublessee is subleasing the Subleased Premises on an "as is" basis as set forth in Paragraph 7 above, subject, however, to the provisions of Paragraphs 14.B., 31 and 35 below, and that Sublessor has made no representations or warranties with respect to the condition of the Subleased Premises except as otherwise expressly set forth in this Sublease.

14. IMPROVEMENTS.

A. Sublessee's Alterations. No alterations or improvements shall be made to the Subleased Premises except in strict accordance with this Sublease and Article 12 of the Master Lease, and with the prior written consent of both Master Lessor and Sublessor, which consent of Sublessor shall not be unreasonably withheld or delayed. Sublessor approves in concept (with final approval, which shall not be unreasonably withheld or delayed, subject to review of Sublessee's plans and specifications in connection therewith) Sublessee's installation of a laboratory bench in the Subleased Premises ("Bench"). Nothing contained in the foregoing conceptual approval, however, shall relieve Sublessee from the obligation to obtain Master Lessor's consent to the Bench in accordance with the Master Lease. If Sublessee intends to construct alterations or improvements to the Subleased Premises, other than the Bench, Sublessee shall be obligated to obtain Sublessor's and Master Lessor's prior written consent to such alterations or improvements. Any alteration or improvement undertaken by Sublessee, including the Bench, shall be performed in accordance with the provisions of Article 12 of the Master Lease, with all required governmental permits and in compliance with all applicable laws. Sublessor shall not be required to provide a tenant improvement allowance to Sublessee in connection with Sublessee's construction of any improvements to the Subleased Premises, including the Bench, and any such improvements, including the Bench, shall be installed at Sublessee's sole cost and expense. Upon the expiration or earlier termination of this Sublease, Sublessee, at its sole cost and expense, shall be responsible for removing any and all alterations or improvements installed in the Subleased Premises by Sublessee, and restoring the Subleased Premises to its condition immediately prior to the alteration or improvement, ordinary wear and tear, damage by casualty and condemnation excepted, unless Master Lessor and/or Sublessor notify Sublessee in writing that Master Lessor and/or Sublessor will not require Sublessee to remove such alterations or improvements. Notwithstanding the foregoing, Sublessee hereby acknowledges that Sublessee shall be required to remove the Bench upon the expiration or earlier termination of this Sublease, and to restore any portion of the Subleased Premises affected by the Bench to its condition immediately prior to the installation thereof.

B. Sublessor's Improvements. Not later than the Commencement Date, Sublessor, at no cost to Sublessee, shall install a card access system and fire wall to complete the demising of the Subleased Premises from the balance of the third floor of the Building ("Demising Improvements"). In addition, Sublessor, at no cost to Sublessee but subject to the prior written consent of Master Lessor, shall remove the chemistry hoods identified on Exhibit

C, attached hereto and incorporated by reference herein, and install in place of the hoods two (2) laboratory benches of a quality consistent with the laboratory benches already located within the Subleased Premises ("Sublessor Improvements"). Each laboratory bench shall have one (1) sink. The Demising Improvements and the Sublessor Improvements shall be constructed in compliance with the provisions of the Master Lease and all applicable law, in a good and workmanlike manner, free of defects and using materials and equipment of good quality. Sublessee acknowledges and agrees that the Sublessor Improvements will not be completed by January 1, 2003. Sublessor shall use reasonable efforts to minimize interference with Sublessee's business operations in constructing the Sublessor Improvements, which shall, in any event, be completed no later than March 31, 2003. Sublessee shall not be required to remove the Demising Improvements or the Sublessor Improvements upon the expiration or earlier termination of this Sublease.

15. WAIVER OF SUBROGATION AND RELEASE. Sublessor hereby releases Sublessee, and Sublessee hereby releases Sublessor, and each of their respective partners, principals, members, officers, agents, employees and servants, from any and all liability for loss, damage or injury to the property of the other in or about the Subleased Premises which is caused by or results from a peril or event or happening which is covered by property insurance actually carried and in force at the time of the loss by the party sustaining such loss or required to be carried hereunder. Sublessee shall give notice to all insurance carriers that the foregoing mutual waiver of subrogation is contained in this Sublease, and shall obtain from such insurance carriers a waiver of the rights of subrogation. Except where caused by the negligence or willful misconduct of Sublessor or as otherwise set forth in Section 8.B., Sublessor shall not be liable to Sublessee, nor shall Sublessee be entitled to terminate this Sublease or to abate Rent for any reason, including, without limitation: (i) failure or interruption of any utility system or service; or (ii) failure of Master Lessor to maintain the Subleased Premises as may be required under the Master Lease. Notwithstanding the foregoing to the contrary, to the extent that Rent is abated for Sublessor with respect to the Subleased Premises pursuant to the terms of the Master Lease, Sublessee's Rent obligations with respect to the Subleased Premises also shall be abated. Sublessor and Sublessee are corporations, and the obligations of Sublessor and Sublessee shall not constitute the personal obligations of the officers, directors, trustees, partners, joint venturers, members, owners, stockholders or other principals or representatives of such corporations.

16. DEFAULT. Sublessee's performance of each of its obligations under this Sublease constitutes a condition as well as a covenant, and Sublessee's right to continue in possession of the Subleased Premises is conditioned upon such performance. In addition, Sublessee shall be in material default of its obligations under this Sublease if Sublessee is responsible for the occurrence of any of the events of default set forth in Article 24 of the Master Lease.

17. REMEDIES. In the event of any default by Sublessee under this Sublease (including, without limitation, a default pursuant to Article 24 of the Master Lease), Sublessor shall have all remedies provided by applicable law and in equity, including, without limitation, all rights pursuant to Article 25 of the Master Lease. Sublessor may resort to its remedies cumulatively or in the alternative.

18. SURRENDER. Subject to the provisions of Paragraph 14 above, on or before the Expiration Date or earlier termination of this Sublease, Sublessee shall remove all of its trade

fixtures and all alterations and improvements (unless Master Lessor and Sublessor have notified Sublessee in writing that they will not require Sublessee to remove its alterations and improvements), and shall surrender the Subleased Premises to Sublessor in the same condition as received, ordinary wear and tear and damage by casualty and condemnation and any obligations of Sublessor under this Sublease excepted. Any damage or deterioration of the Subleased Premises shall not be deemed ordinary wear and tear if the same could have been prevented by customary and ordinary maintenance practices. Not later than the expiration of the Term of this Sublease or the date of any sooner termination, Sublessee shall repair any damage to the Subleased Premises occasioned by the installation or removal of Sublessee's trade fixtures, furnishings, equipment, alterations or improvements and personal property, and to the extent that Sublessee has reconfigured the Furniture or Equipment, Sublessee shall return the Furniture and Equipment to the location and configuration in which they were received from Sublessor. If the Subleased Premises are not so surrendered, then Sublessee shall be liable to Sublessor for all costs incurred by Sublessor in returning the Subleased Premises to the required condition, plus interest thereon at the maximum rate permitted by law. Sublessee shall indemnify, defend, protect and hold harmless Sublessor against any and all claims, liabilities, judgments, causes of action, damages, costs, and expenses (including attorneys' and experts' fees) resulting from Sublessee's delay in surrendering the Subleased Premises, including, without limitation, any claim made by Master Lessor or any succeeding tenant or subtenant founded on or resulting from such failure to surrender. The indemnification set forth in this Paragraph shall survive the expiration or earlier termination of this Sublease. Notwithstanding anything contained herein or the Master Lease to the contrary, Sublessee shall have no responsibility for the removal and/or restoration of any alterations or improvements to the Subleased Premises if not installed or constructed by Sublessee.

19. BROKERS. Sublessor and Sublessee each represent to the other that they have dealt with no real estate brokers, finders, agents or salesmen in connection with this transaction, except for BT Commercial, representing Sublessor, and Cornish & Carey Commercial, representing Sublessee. Each party agrees to hold the other party harmless from and against all claims for brokerage commissions, finder's fees, or other compensation made by any other agent, broker, salesman or finder as a consequence of said party's actions or dealings with such other agent, broker, salesman, or finder. The warranties and representations contained in this Paragraph 19 shall survive the termination of this Sublease. Sublessor shall be responsible for payment of a brokerage commission in connection with this transaction pursuant to a separate agreement between Sublessor and BT Commercial.

20. NOTICES. Unless five (5) days' prior written notice is given in the manner set forth in this Paragraph, the addresses of Sublessor and Sublessee for all purposes connected with this Sublease shall be the addresses set forth below their respective signatures. All notices, demands, or communications in connection with this Sublease shall be considered received when (i) personally delivered, or (ii) if properly addressed and sent by either nationally recognized overnight courier or deposited in the mail (registered or certified, return receipt requested, and postage prepaid), on the date shown on the return receipt or other documentation for acceptance or rejection. All notices given to the Master Lessor under the Master Lease shall be considered received only when delivered in accordance with Article 33 of the Master Lease to 135 North Los Robles Avenue, Suite 250, Pasadena, California 91101.

21. SEVERABILITY. If any term of this Sublease is held to be invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Sublease shall remain in full force and effect to the fullest extent possible under the law, and shall not be affected or impaired.

22. AMENDMENT. This Sublease may not be amended except by the written agreement of all parties hereto.

23. ATTORNEYS' FEES. In the event of any dispute between the parties arising under this Sublease, or the breach of any covenant or condition under this Sublease, then the prevailing party shall be entitled to have and recover from the party not so prevailing, the prevailing party's reasonable costs and reasonable attorneys' fees incurred in any dispute, collection or attempted collection, negotiation relative to the obligations contained herein, or action or proceeding brought to enforce this Sublease, whether such costs and fees are incurred in taking any action under this Sublease or in any judicial proceeding (including appellate proceedings). "Prevailing party" for the purposes of this Paragraph 23 shall include, without limitation, the party who receives from the other party the sums allegedly due, performance of the covenants allegedly breached, consideration substantially equal to that which was demanded, or substantially the relief or consideration sought, whether or not any judicial proceeding is commenced or prosecuted to final judgment, or a party who dismisses a judicial action in return for substantially the performance or relief sought or in the payment of the sums allegedly due.

24. OTHER SUBLEASE TERMS.

A. Incorporation By Reference. Except as otherwise provided in this Sublease, the terms and conditions of this Sublease shall include various Sections of the Master Lease, which are incorporated into this Sublease as if fully set forth, except that: (i) each reference in such incorporated Sections to "Lease" shall be deemed a reference to "Sublease"; (ii) each reference to the "Premises" shall be deemed a reference to the "Subleased Premises"; (iii) each reference to "Landlord" and "Tenant" shall be deemed a reference to "Sublessor" and "Sublessee", respectively, except as expressly set forth herein; (iv) each reference to "Term" shall be deemed a reference to the Term of this Sublease; (v) except as otherwise set forth in this Sublease, with respect to work, services, repairs, restoration, provision of insurance or the performance of any other obligation of Master Lessor under the Master Lease relative to the Subleased Premises, the sole obligations of Sublessor shall be to request the same in writing from Master Lessor as and when requested to do so by Sublessee, to use Sublessor's commercially reasonable efforts to obtain the Master Lessor's performance thereof, and to exercise such rights and remedies under the Master Lease without delay as are available to Sublessor in the event Master Lessor fails to perform such obligations, all at Sublessee's sole cost and expense; (vi) with respect to any obligation of Sublessee to be performed under this Sublease, wherever the Master Lease grants to Sublessor a specified number of days to perform its obligations under the Lease, Sublessee shall have three (3) fewer days to perform the obligation, including, without limitation, curing any defaults (provided, however, that if any cure period provides for three (3) days or less to perform, Sublessee shall have two (2) business days to perform); (vii) Sublessor shall have no liability to Sublessee with respect to (a) representations and warranties made by Master Lessor under the Master Lease, (b) any indemnification obligations of Master Lessor under the Master Lease, or other obligations or liabilities of Master

Lessor under the Master Lease with respect to compliance with laws, condition of the Subleased Premises or Hazardous Materials, except to the extent expressly incorporated into this Sublease, and (c) obligations of Master Lessor under the Master Lease to repair, maintain, restore or insure all or any portion of the Subleased Premises; and (viii) with respect to any approval required to be obtained from the "Landlord" under the Master Lease, such consent must be obtained from both the Master Lessor and Sublessor, and the approval of Sublessor may be withheld if the Master Lessor's consent is not obtained. In the event of a conflict between the provisions of the Master Lease and the provisions of this Sublease, as between Sublessor and Sublessee the provisions of this Sublease shall control.

The following Sections of the Master Lease hereby are incorporated into this Sublease:

Basic Lease Information Sections "Landlord", "Landlord's Address", "Tenant", "Tenant's Contact Person", "Tenant's Address", "Premises Address", "Project", "Building", "Tenant's Proportionate Share of Project" (with "Tenant" meaning Sublessor), "Tenant's Proportionate Share of Building" (with "Tenant" meaning Sublessor), "Expiration Date" and "Permitted Use";

Article 1;

Section 2.1, except that (i) the first and third sentences hereby are deleted, and (ii) references to "Landlord" in the second sentence shall mean only Master Lessor;

Section 2.2(c), except that "Tenant" shall mean only Sublessor with respect to required payments or implementation of programs;

Section 2.3, except that references to "Landlord" in Sections 2.3(a) and 2.3(b) shall mean only Master Lessor; provided, however, that the reference to "Landlord" in the fourth line of Section 2.3(b) shall mean both Master Lessor and Sublessor, and provided further, however, that if parking is reduced by Master Lessor under the Master Lease, Sublessee's parking shall only be reduced on a pro-rata basis;

Sections 4.2 through 4.4, except that (i) references to "Landlord" in subsection (ii) in Section 4.2.1, Sections 4.2.2, 4.2.4, 4.2.6, 4.2.7, 4.2.8, 4.2.9 and the last paragraph of Section 4.2 shall mean only Master Lessor, and (ii) the fifth, sixth and seventh sentences of Section 4.2.1 hereby are deleted, and except that the first paragraph of Section 4.2 is deleted in its entirety (except that the definition of "Expenses" shall be as defined therein), and except that Sublessee's payment obligations with respect to the items enumerated in such Section shall be in accordance with the terms of this Sublease;

Section 4.6;

Articles 5 and 6, except that (i) references to "Landlord" in Section 5.2(b) shall mean only Master Lessor, and (ii) references to "Landlord" in the first sentence of Section 5.1 shall mean only Sublessor, except that Sublessee's payment obligations with respect to the items listed in Section 5.1 shall be in accordance with the terms of this Sublease and nothing herein shall be deemed to release Sublessee from its obligations to pay its own telephone, telecommunications and data costs, fees, charges and expenses as set forth in Paragraph 4.B. above;

Article 9, except that (i) references to "Landlord" in the second, fifth and ninth sentences of Section 9.3 shall mean only Master Lessor; (ii) references in Section 9.2(a) to "Landlord" shall mean only Master Lessor, and (iii) references in Section 9.2(b)(l) to "Tenant" shall mean Sublessor and Sublessee, except that the obligations to pay costs as set forth in such subsection shall be the obligation of Sublessor unless the cost is a result of any improvements or alterations made or proposed to be made by Sublessee;

Articles 11 and 12, except that (i) Section 11.1 hereby is deleted in its entirety; (ii) the last phrase of the first sentence of Section 11.2 (beginning with "and (B) all Tenant improvements. . .") and the second sentence of Section 11.2 hereby are deleted; (iii) the reference in Section 12.2 to "Thirty Thousand Dollars ($30,000.00)" shall be revised to read "Ten Thousand Dollars ($10,000.00)", (iv) the reference in Section 12.2 to "Two Hundred Thirty Thousand Dollars ($230,000.00)" shall be revised to read "Twenty Thousand Dollars ($20,000.00)", and (v) the last two sentences of Section 12.6 hereby are deleted;

Article 13, except that (i) references to "Tenant" in Section 13.1 shall mean only Sublessor (except for Sublessee's signage, if any, which shall be the sole responsibility of Sublessee), and except that Sublessee's payment obligations with respect to the items listed in Section 13.1 shall be in accordance with the terms of this Sublease, and (ii) references to "Landlord" in Section 13.2 and in the second, third and fourth sentences of Section 13.3 shall mean only Master Lessor;

Articles 14 through 16, except that (i) references to "Landlord" in Article 14 shall mean only Master Lessor, and (ii) the phrase "including, without limitation, the covenant set forth in Paragraph 9.2(a) above" in Section 16.1 hereby is deleted;

Articles 17 through 20;

Article 21, except that (i) references to "Landlord" in Sections 21.1, 21.2, 21.3, 21.4 and 21.6 shall mean only Master Lessor, and (iii) Sublessee shall not exercise the termination right provided by Section 21.4 without the prior written consent of Sublessor, which shall not be unreasonably withheld or delayed;

Article 22, except that (i) references to "Landlord" in Article 22 shall mean only Master Lessor, and (ii) Sublessee shall not exercise the termination right provided by Section 22(a) without the prior written consent of Sublessor, which shall not be unreasonably withheld or delayed;

Articles 23 through 26, except that (i) references in Section 24(i) to "Paragraph 7" of the Master Lease shall mean Paragraph 5 of this Sublease, and (ii) Section 24(o) hereby is deleted;

Section 27.2;

Articles 28 through 31, except that (i) references to "Landlord" in Articles 29 and 31 shall mean only Master Lessor, and (ii) references in Article 28 to "Tenant's Property" shall mean Sublessee's personal property located in the Building, excluding the Furniture and Equipment (as described in Paragraph 30.B. below;

Article 32, except that (i) the references in Article 32 to "Exhibit E" shall be deemed a reference to Exhibit G attached hereto, (ii) the last two sentences of Section 32.3 shall mean only Master Lessor and (iii) references in Section 32.11 to "Landlord" shall mean only Master Lessor;

Article 33, but only for purposes of sending notices to Master Lessor;

Article 34;

Articles 36 and 37, except that references to "Landlord" in Section 36.2 shall mean only Master Lessor;

Articles 39 through 42, except that (i) references to "Landlord" in Articles 39 and 42 shall mean only Master Lessor, and (ii) references to "Landlord" in Article 41 shall mean only Master Lessor; provided, however, that the reference in the third sentence of Article 41 shall mean both Master Lessor and Sublessor;

Articles 44 through 48;

Article 50, except that (i) references to "Landlord" in the second sentence of Section 50.1 shall mean only Master Lessor, and (ii) Sublessor shall exercise the rights set forth in Article 50 on a non-discriminatory basis; and

Exhibits A-2, the second sentence of Exhibit C, and Exhibits D, E and F (except that the reference to "Tenant" in Exhibit F shall mean only Sublessor).

B. Assumption of Obligations. This Sublease is and at all times shall be subject and subordinate to the Master Lease and the rights of Master Lessor thereunder. Sublessee hereby expressly assumes and agrees: (i) to comply with all provisions of the Master Lease with respect to the Subleased Premises during the Term to the extent incorporated herein; (ii) to perform all the obligations on the part of the "Tenant" to be performed under the terms of the Master Lease with respect to the Subleased Premises during the Term to the extent incorporated herein; and (iii) to hold Sublessor free and harmless of and from all liability, judgments, costs, out-of-pocket damages (excluding punitive or consequential damages [i.e., lost profits, lost business opportunity]), claims, demands, and expenses (including reasonable attorneys' and experts' fees) arising out of Sublessee's failure to comply with or to perform Sublessee's obligations hereunder or the obligations of the "Tenant" under the Master Lease as herein provided, or to act or omit to act in any manner which will constitute a breach of the Master Lease. The foregoing indemnification shall survive the termination of this Sublease.

C. Sublessor's Obligations. Sublessor hereby agrees to maintain the Master Lease in force during the entire Term of this Sublease, and to pay rent to Master Lessor in accordance with the terms of the Master Lease, subject, however, to any earlier termination of the Master Lease without the fault of Sublessor. Sublessor promptly shall deliver to Sublessee copies of all notices, demands and requests, including notices of default, that Sublessor may receive under the Master Lease. Sublessor represents and warrants to Sublessee that the Master Lease is in full force and effect, and that no default or event that, with the passing of time or the giving of notice or both, would constitute a default, exists on the part of Sublessor, or, to the best

of Sublessor's actual knowledge, the Master Lessor. Sublessor shall not voluntarily terminate, amend or modify the Master Lease in such a manner as to materially adversely affect Sublessee's use of the Subleased Premises or materially increase the obligations or materially diminish the rights of Sublessee hereunder, without the prior written consent of Sublessee, which shall not be unreasonably withheld or delayed.

25. CONDITION PRECEDENT. The Commencement Date and Sublessor's and Sublessee's rights and obligations hereunder are conditioned upon receipt by Sublessor of Master Lessor's written consent to this Sublease, in form and content reasonably acceptable to Sublessor and Sublessee. Sublessee shall provide to Master Lessor all financial and other information requested by Master Lessor pursuant to Article 23 of the Master Lease. If Sublessor fails to obtain the Master Lessor's consent within fifteen (15) days after the date on which Sublessor delivers to Master Lessor a copy of this Sublease executed by Sublessor and Sublessee, then Sublessee may terminate this Sublease by giving Sublessor five (5) days' prior written notice, in which case this Sublease shall terminate on the day following the last day of the five (5) day notice period (unless Master Lessor's consent is obtained and Sublessor delivers the Subleased Premises during such five (5)- day period, in which case this Sublease shall remain in full force and effect), neither party shall have any further rights or obligations hereunder and Sublessor shall return to Sublessee the Letter of Credit and all sums paid by Sublessee to Sublessor in connection with Sublessee's execution hereof. If Sublessee has not exercised its termination right as set forth in this Paragraph and Sublessor has not obtained the Master Lessor's consent within forty-five (45) days after the date on which Sublessor delivers to Master Lessor a copy of this Sublease executed by Sublessor and Sublessee, Sublessor shall have the right to terminate this Sublease by giving Sublessee written notice, in which case this Sublease shall terminate as of the date of Sublessor's written notice, neither party shall have any further rights or obligations hereunder and Sublessor shall return to Sublessee the Letter of Credit and all sums paid by Sublessee to Sublessor in connection with Sublessee's execution hereof. The return of the Letter of Credit and all sums paid by Sublessee to Sublessor shall be Sublessee's sole and exclusive remedy in the event of a termination pursuant to the foregoing sentence.

26. NO OFFER. Submission of this Sublease for examination or signature by Sublessee does not constitute a reservation of, option for or option to sublease, and such submission is not effective as a sublease or otherwise until execution and delivery hereof by both Sublessor and Sublessee, subject, however, to the provisions of Paragraph 25 above.

27. SUBLESSEE'S FINANCIAL STATEMENTS. Not more than once each calendar year during the Term, Sublessee shall provide to Sublessor, within ten (10) days after receipt of Sublessor's written request therefor, Sublessee's year-end audited financial statements, prepared in accordance with generally accepted accounting principles. Sublessor shall keep such financial statements confidential except to the extent it is necessary to provide such information to its third party accountants or attorneys in the normal course of Sublessor's business, and require such third party accountants or attorneys to keep the same confidential, or when Sublessor is required to release, such information by a court of competent jurisdiction or by applicable law.

28. HOLDING OVER. No right to hold over in the Premises is granted hereby. If Sublessee remains in possession of the Subleased Premises or any part thereof after the

expiration of the Term hereof with the prior consent of Sublessor and Master Lessor, such occupancy shall be a tenancy from month-to-month upon all the provisions of this Sublease pertaining to the obligations of Sublessee, except that Monthly Base Rent shall be increased to an amount equal to the greater of 150% of the Monthly Base Rent paid during the last month of the Term and the then-fair market value of the Subleased Premises, and any other sums due hereunder shall be due and payable in the amount and at the time specified in this Sublease. If Sublessee holds over in the Subleased Premises after the expiration or sooner termination of the Term of this Sublease without the prior written consent of Sublessor and Master Lessor, such occupancy shall be a tenancy at sufferance upon all the provisions of this Sublease, except that Monthly Base Rent shall increase to an amount equal to the greater of 200% of the Monthly Base Rent paid during the last month of the Term and the then-fair market value of the Subleased Premises, all other sums due under this Sublease shall remain due and payable and Sublessee shall indemnify, defend, protect and hold harmless Sublessor and Master Lessor from and against any and all claims for damages as the result of the failure of Sublessee to surrender the Subleased Premises in the condition required by this Sublease upon the expiration or sooner termination of the Term of this Sublease, including, without limitation, claims made by any succeeding tenant or subtenant. The foregoing indemnification shall survive the expiration or earlier termination of this Sublease.

29. COUNTERPARTS; FACSIMILE SIGNATURES. This Sublease may be executed in counterparts, each of which, when taken together as a whole, shall constitute one (1) original document. Facsimile signature pages are acceptable.

30. EXPENSE, FURNITURE, SERVICES REIMBURSEMENTS.

A. Expense Reimbursement. Notwithstanding anything to the contrary contained in this Sublease or the Master Lease, Sublessor shall provide to Sublessee and perform during the Term all services and repairs and maintenance relating to Sublessee's use of the Subleased Premises, including, without limitation: (i) water, sewer use, sewer discharge fees, gas, heat, air conditioning, ventilation, electricity, refuse pick-up, janitorial service (including, without limitation, exterior and interior window washing) and all other utilities serving the Subleased Premises; (ii) all building service contracts; (iii) maintenance and repair of the Subleased Premises; (iv) other facilities expenses not included in the foregoing; and (v) provision of payment of personal property taxes and insurance to the extent not the obligation of Sublessee pursuant to Paragraph 4.B. above. Sublessee shall reimburse to Sublessor as Additional Sublease Rent a portion of the costs relating to the above, and such sums herein are defined as the "Expense Reimbursement". Sublessee's monthly Expense Reimbursement during the Term shall equal $1.29 per rentable square foot of the Subleased Premises per month, or $13,566.61, which Expense Reimbursement shall be paid by Sublessee to Sublessor each month during the Term at the time that Monthly Base Rent is due and payable.

B. Furniture, Equipment Reimbursement. Notwithstanding anything to the contrary contained in this Sublease or the Master Lease, during the Term of this Sublease, Sublessee, shall be permitted to use the furniture and other personal property ("Furniture") currently located in the Subleased Premises and more particularly described on **Exhibit D** attached hereto and incorporated by reference herein, as well as all of the equipment ("Equipment") currently located in the Subleased Premises and more particularly described on

Exhibit D. Except as otherwise set forth herein, Sublessor makes no representation or warranty of any kind with respect to the Furniture or the Equipment, including, without limitation, the condition or fitness of the Furniture or the Equipment for Sublessee's proposed or actual use thereof, provided, however, that Sublessor does hereby represent and warrant that it has the right to lease the Equipment and the Furniture to Sublessee during the Term of this Sublease. If Sublessor encumbers the Furniture or the Equipment to an equipment lease during the Term, Sublessor first shall obtain the consent of the equipment lessor to the provisions of this Paragraph, and Sublessee shall execute all documents reasonably required by the equipment lessor as a condition to its consent. Sublessor shall fulfill all of its obligations under any equipment lease. Sublessor hereby represents and warrants that the Equipment and the Furniture are in good condition and repair as of the Commencement Date, and during the Term Sublessor shall repair and maintain the Equipment and the Furniture as set forth in Paragraph 31 below. Sublessee shall surrender the Furniture and the Equipment to Sublessor on the Expiration Date in the condition and location received, normal wear and tear, damage by casualty and condemnation and obligations of Sublessor under this Sublease excepted.

In consideration for the use of the Furniture and the Equipment, Sublessee shall reimburse to Sublessor as Additional Sublease Rent on a monthly basis during the Term a Furniture and Equipment reimbursement (collectively, "Furniture Reimbursement") in the amount of $0.64 per rentable square foot of the Subleased Premises per month, or $6,725.76, which Furniture Reimbursement shall be paid by Sublessee to Sublessor each month during the Term at the time that Monthly Base Rent is due and payable.

C. Services Reimbursement. Notwithstanding anything to the contrary contained in this Sublease or the Master Lease, Sublessor shall provide to Sublessee during the Term all of the services more particularly described on Exhibit E attached hereto and incorporated by reference herein ("Services") in sufficient quantities and quality as may be mutually agreed to by the parties from time to time for Sublessee's use of and business operations within the Subleased Premises. Sublessee shall reimburse to Sublessor as Additional Sublease Rent a portion of the costs relating to the Services, and such reimbursement is defined herein as the "Services Reimbursement". Sublessee's monthly Service Reimbursement during the Term shall equal $0.25 per rentable square foot of the Subleased Premises per month, or $2,627.25, which Expense Reimbursement shall be paid by Sublessee to Sublessor each month during the Term at the time that Monthly Base Rent is due and payable.

D. Reimbursements. The Expense Reimbursement, the Furniture Reimbursement and the Services Reimbursement shall be referred to in this Sublease from time to time as the "Reimbursements".

31. MAINTENANCE AND REPAIR OF SUBLEASED PREMISES, FURNITURE, EQUIPMENT. Notwithstanding anything to the contrary contained in the Master Lease or this Sublease, all maintenance and repair of the Subleased Premises (including water systems, vacuum pumps, air lines, CAT5 wiring and telecommunications lines serving the Subleased Premises), when the need for maintenance and/or repair is required and is not otherwise the obligation of Master Lessor under the Master Lease, shall be the obligation of Sublessor pursuant to the terms of the Master Lease (except for Sublessee's signage, as set forth in Paragraph 32 below). Sublessor shall maintain the Furniture and Equipment in good condition

and repair, including the making of any replacements thereto as may be required in Sublessor's reasonable discretion. Sublessee shall so notify Sublessor in writing of the need for maintenance or repair of the Subleased Premises, the Furniture or the Equipment, and Sublessor shall perform such maintenance and/or repair within a reasonable time. Notwithstanding the foregoing sentence, Sublessor shall use diligent good faith efforts to perform any maintenance or repairs required by this Paragraph in accordance with the timing and standards with which Sublessor performs its own maintenance and repairs. With respect to the Furniture or the Equipment, Sublessor shall perform maintenance pursuant to any ongoing maintenance contracts with licensed professionals, and shall perform any required repairs promptly so as to minimize any interruption in Sublessee's business operations. The costs for maintenance and repairs of the Subleased Premises, the Furniture and the Equipment shall be included in the Expense Reimbursement payable by Sublessee pursuant to Paragraph 30 above. In no event shall Sublessor be required to maintain or repair the Subleased Premises (including, without limitation, the water systems, vacuum pumps, air lines, CAT5 wiring and telecommunication lines serving the Subleased Premises), or maintain, repair and/or replace the Furniture or the Equipment, when the need for such maintenance, repair and/or replacement is the result of any negligence, willful misconduct or omission of Sublessee, its agents, employees, contractors, sublessees or assignees, the maintenance, repair and/or replacement with respect to which shall be the sole obligation of Sublessee. If Sublessor shall fail to provide any of the Services required to be provided by Paragraph 30 above or to perform any of the maintenance and repairs of the Subleased Premises, the Furniture or the Equipment required under this Paragraph, for a period of five (5) consecutive business days after receipt of written notice from Sublessee, and such failure is due solely to the negligence or willful misconduct of Sublessor, then notwithstanding any other provision of this Sublease or the Master Lease to the contrary, the Rent hereunder shall be abated until the maintenance or repair has been completed in a proportion equal to the damage caused to Sublessee by such failure, as reasonably determined (with reasonable supporting documentation in connection therewith) by Sublessee.

32. SIGNAGE. Subject to obtaining the prior written approval of Master Lessor and Sublessor, Sublessee, at Sublessee's sole cost and expense, shall be entitled to Sublessee's Share of the signage permitted by Article 18 of the Master Lease.

33. COMMON AREA RECEPTION. Sublessor and Sublessee acknowledge and agree that both parties anticipate using the existing reception area located on the ground floor of the Premises as a common area, accessible to both parties. In addition, Sublessor shall provide either a receptionist or a security guard to be located in the reception area. Sublessee shall pay to Sublessor Sublessee's Share of the start-up and monthly costs arising out of Sublessor's hiring of the receptionist or security guard as Additional Sublease Rent within twenty (20) days after receipt of Sublessor's invoices therefor.

34. HAZARDOUS MATERIALS. Sublessee may store and use on the Subleased Premises, in accordance with the provisions of Article 32 of the Master Lease, the Hazardous Materials identified on the Hazardous Materials Disclosure Certificate to be prepared and executed by Sublessee in the form attached hereto as **Exhibit G** and incorporated by reference herein, so long as consent to the storage and use of such Hazardous Materials by Sublessee has been granted in writing by Sublessor and Master Lessor. Sublessee shall provide an executed

copy of the completed Hazardous Materials Disclosure Certificate to Sublessor not later than the date of execution of this Sublease by Sublessee.

A. Sublessee's Indemnification. In addition to Sublessee's other indemnity obligations under this Sublease, Sublessee shall protect, indemnify, defend upon demand with counsel reasonably acceptable to Sublessor, and hold harmless Sublessor and Master Lessor and their respective officers, directors, employees, agents, successors and assigns from and against any and all liabilities, losses, claims, actual out-of-pocket damages (excluding punitive and consequential damages [i.e., lost profits, lost business opportunity]), interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses to the extent caused by the use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Premises, the Building or the Project by Sublessee or Sublessee's agents, employees, contractors, sublessees, assignees or licensees.

B. Sublessor's Indemnification. Sublessor shall protect, indemnify, defend upon demand with counsel reasonably acceptable to Sublessee, and hold harmless Sublessee and its officers, directors, employees, agents, successors and assigns from and against any and all liabilities, losses, claims, actual out-of-pocket damages [excluding punitive and consequential damages [i.e., lost profits, lost business opportunity]), interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses to the extent caused by the use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Premises, the Building or the Project by Sublessor or Sublessor's agents, employees, contractors, successors, assignees or licensees.

C. Survival. The foregoing indemnifications shall survive the expiration or earlier termination of this Sublease.

D. Sublessee's Responsibility. Except to the extent that the Hazardous Material in question was released, emitted, used, stored, manufactured, transported or discharged on, in, under or about the Premises, the Building or the Project by Sublessee, or its agents, employees, contractors, sublessee, assignees or licensees, Sublessee shall not be responsible for costs or liabilities with respect to any Hazardous Material present on or about the Premises, the Building or the Project.

35. TELEPHONE SOFTWARE. On or prior to the Commencement Date, Sublessor shall install in the Subleased Premises partitioning software ("Software") to enable Sublessee to use Sublessor's existing telephone system. Sublessee shall use reasonable efforts to minimize interference with Sublessee's business operations in installing the Software. The Software shall be installed in compliance with the provisions of the Master Lease and all applicable law, in a good and workmanlike manner, free of defects and using materials and equipment of good quality. Upon the execution of this Sublease by Sublessee, Sublessee shall pay to Sublessor the sum of $13,500.00 to reimburse Sublessor for the cost of installing the Software. Sublessee shall use Sublessor's telephone consultants so as to minimize interference with Sublessor's existing telephone system. Sublessor shall have the right to shut the telephone system down for maintenance and upgrades, but Sublessor shall provide prior notice to Sublessee of any scheduled maintenance or upgrade. Sublessor shall not be liable in any manner to Sublessee if

the telephone system goes down or service is interrupted under any circumstances beyond the reasonable control of Sublessor, but Sublessor shall use diligent good faith efforts to reestablish service in accordance with the timing and standards with which Sublessor works to reestablish its own telephone service. Notwithstanding anything to the contrary contained in this Paragraph, Sublessee shall be responsible for payment of all telephone costs, charges, fees and expenses to the provider as set forth in Paragraph 4.B. above.

36. T-1 LINE. Not later than the Commencement Date, Sublessor shall provide Sublessee with a temporary connection to its T-1 line. Sublessee shall be responsible for providing the required trunk lines. Also not later than the Commencement Date, Sublessee shall order its own T-1 line. In connection with its temporary use of Sublessor's T-1 line, Sublessee shall use Sublessor's network consulting group, Clarke Consulting, LLC, and shall comply with SBC/Pacific Bell internet usage guidelines so as not to interfere with Sublessor's use of its T-1 line. At the time that Sublessee pays Monthly Base to Sublessor, Sublessee shall pay to Sublessor as Additional Sublease Rent the sum of $1,000.00 for each month that Sublessee uses Sublessor's T-1 line (prorated on the basis of a thirty (30)- day month). Sublessee also shall pay to Sublessor, within twenty (20) days after receipt of Sublessor's invoice(s) therefor, the cost of the labor actually incurred by Sublessor in relocating and programming the T-1 line for Sublessee's temporary use. Except where caused by the gross negligence or willful misconduct of Sublessor, Sublessee shall indemnify, protect, defend and hold Sublessor harmless of and from all liability, judgments, costs, damages (excluding punitive but including consequential damages [i.e., lost profits, lost business opportunity]), claims, demands, and expenses (including reasonable attorneys' and experts' fees) arising out of Sublessee's use of Sublessor's T-1 line. Sublessee shall have the right to terminate the use of Sublessor's T-1 line at any time by providing prior notice of such termination to Sublessor.

37. SUBLESSEE'S EQUIPMENT FINANCING. Sublessor acknowledges that Sublessee may enter with a third party an equipment lease or similar arrangement relative to Sublessee's personal property (excluding the Furniture and the Equipment) to be located on the Subleased Premises. Sublessor waives any and all rights, title and interest Sublessor now has, or hereafter may have, whether statutory or otherwise, to Sublessee's personal property ("Collateral") located at the Subleased Premises. Sublessor acknowledges that Sublessor has no lien, right, claim, interest or title in or to the Collateral. Sublessor further agrees that Sublessee shall have the right, at its reasonable discretion, to mortgage, pledge, hypothecate or grant a security interest in the Collateral as security for its obligations under any equipment lease or other financing arrangement related to the conduct of Sublessee's business at the Subleased Premises. Sublessor further agrees to execute and deliver within ten (10) business days after receipt by Sublessor any reasonable documentation (as determined in Sublessor's sole but reasonable discretion) reasonably required by Sublessee's equipment lessor to be executed by Sublessor in connection with any such lease or financing arrangement, setting forth that Sublessor waives, in favor of such party, any superior lien, claim, interest or other right in the Collateral. Sublessee shall indemnify, protect, defend and hold Sublessor free and harmless of and from all liability, judgments, costs, damages (excluding punitive damages and consequential damages [i.e., lost profits, lost business opportunity]), claims, demands, and expenses (including reasonable attorneys' and experts' fees) with respect to the Furniture and/or Equipment arising out of any equipment lease or similar financing arrangement entered by Sublessee.

IN WITNESS WHEREOF, Sublessor and Sublessee have caused this Sublease to be executed by their duly authorized representatives as of the day and year first above written.

SUBLESSOR:

THERAVANCE, INC., a Delaware corporation

By: /s/ MARTY GLICK

Its: CFO

SUBLESSOR'S ADDRESS FOR NOTICES AND RENT:

Theravance, Inc.
901 Gateway Boulevard
South San Francisco, California 94080
Attention: Marty Glick

SUBLESSEE:

THRESHOLD PHARMACEUTICALS, INC.,

a Delaware corporation

By: /s/ GEORGE F. TIDMARSH

Its: President

SUBLESSEE'S ADDRESS FOR NOTICES:

Prior to the Commencement Date:
Threshold Pharmaceuticals, Inc.
849 Mitten Road, Suite 104
Burlingame, California 94010
Attention: Dr. George Tidmarsh

After the Commencement Date:
At the Subleased Premises

EXHIBIT A

MASTER LEASE

[See exhibit 10.5 to form S-1]

EXHIBIT B

SUBLEASED PREMISES

24.

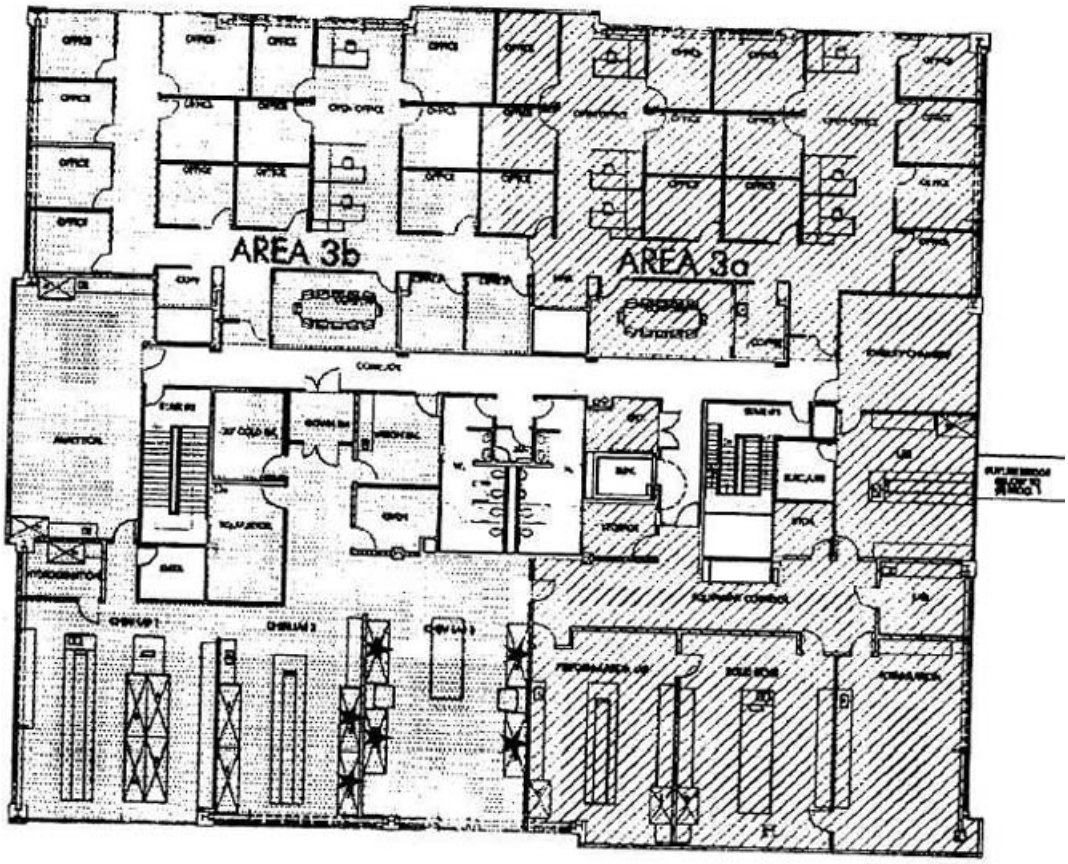

Exhibit B

[AREA 3b]

EXHIBIT C

CHEMISTRY HOODS TO BE REMOVED

25.

* Hood to be removed and replaced with lab benches

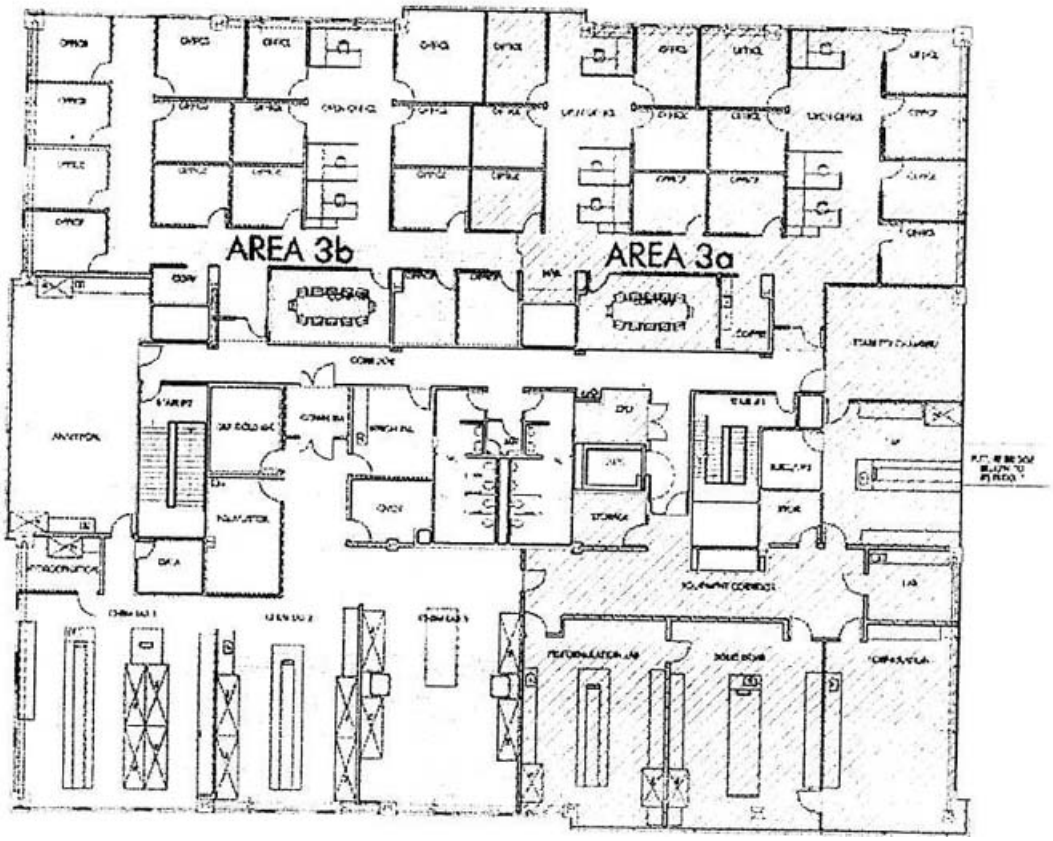

Exhibit C

EXHIBIT D

FURNITURE AND EQUIPMENT

951 chemistry space inventory

Lab space.
3 Glassware cabinets.
1 20 Walk-in.
6 10ft fume hoods.
3 6ft fume hoods.

Office space.
13 scientist offices.
2 V.P. offices.
1 Conference room
3 Cubicles.
2 4 drawer file cabinets.

Scientist Office:
Modular office furniture with white board, 1 desk chair, 1 guest chair, and a 4 drawer file cabinet.

V.P. Office:
Modular office furniture with white board, 1 desk chair, and 2 guest chairs.

Conference Room:
Conference room table, 10 chairs, glass white board, drop down projector screen.

Cubicle:
Modular office furniture with white board and 1 desk chair.

EXHIBIT E

SERVICES PROVIDED TO SUBLEASED PREMISES

- Glassware service includes up to two pick-ups and two deliveries per day, based on need. Dirty glassware will be picked up from designated locations and delivered to clean glassware cabinets.
- Uninterruptible power supply at existing locations.
- Emergency power at existing locations.
- Chemical waste pick up, and consolidation. Up to twice a day, depending on need. This includes delivery of new receptacles in labs and managing the waste stream.

This does not include the expense of the disposal. This contract will need to be carries by Sublessee with waste disposal contractor.

- Biowaste pick up and consolidation. Up to twice a day, depending on need. The contract for the disposal shall be carried by the Sublessee, and cost of disposal is the responsibility of the Sublessee.
- Nitrogen gas is supplied; all other gases are to be purchased by sub-tenant. We will change out the gas cylinders as needed / requested by sub-tenant. We will provide a storage area for the gas cylinders.
- Facilities management.
- Telephone lines
- DI water system
- Vacuum pumps
- Compressed Air
- CAT5 wiring for computer network

EXHIBIT F

RENT AND REIMBURSEMENTS SUMMARY

Months 1-12 – 10,509 Square Feet

Category	Per Square Foot Per Month	Monthly Payment
Monthly Base Rent:	$ 1.03	$ 10,824.27
Sublessee's Share:	$ 0.34	$ 3,573.06
Expense Reimbursement:	$ 1.29	$ 13,556.61
Furniture Reimbursement:	$ 0.64	$ 6,725.76
Services Reimbursement:	$ 0.25	$ 2,627.25
Totals:	$ 3.55	$ 37,306.95

Months 13-24 – 10,509 Square Feet

Category	Per Square Foot Per Month	Monthly Payment
Monthly Base Rent:	$ 1.23	$ 12,926.07
Sublessee's Share:	$ 0.34	$ 3,573.06
Expense Reimbursement:	$ 1.29	$ 13,556.61
Furniture Reimbursement:	$ 0.64	$ 6,725.76
Services Reimbursement:	$ 0.25	$ 2,627.25
Totals:	$ 3.75	$ 39,408.75

EXHIBIT G

HAZARDOUS MATERIALS DISCLOSURE STATEMENT

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Sublessor and Master Lessor to evaluate your proposed uses of the premises (the "**Premises**") and to determine whether enter into and consent to, as applicable, a sublease lease agreement with you as Sublessee. If a sublease agreement is signed by you and Sublessor (the "**Sublease Agreement**"), on an annual basis in accordance with the provisions of Paragraph 32 of the Master Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Sublessor: Theravance, Inc.
901 Gateway Boulevard
So. San Francisco, California 94080
Phone: (650) 808-6000

Master Lessor: _____
_____
_____

Name of (Prospective) Sublessee: Threshold Pharmaceuticals, Inc.

Mailing Address: 849 Mitten Rd, Suite 104
Burlingame, CA 94010

Contact Person, Title and Telephone Number(s): George Tidmarsh, MD, PhD
President and Founder
650-259-1701

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s): Linda DeYoung, Ph.D.
VP, Development
650-259-1702

Address of (Prospective) Premises: 951 Gateway Boulevard
South San Francisco, CA 94080

Length of (Prospective) initial Term: 24 months

1. GENERAL INFORMATION:

Describe the proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled, and services and activities to be provided or otherwise conducted. Existing subtenants should describe any proposed changes to on-going operations.

Research and Development

2. USE, STORAGE AND DISPOSAL OF HAZARDOUS MATERIALS

2.1 Will any Hazardous Materials (as hereinafter defined) be used, generated, treated, stored or disposed of in, on or about the Premises? Existing subtenants should describe any Hazardous Materials which continue to be used, generated, treated, stored or disposed of in, on or about the Premises.

Wastes	Yes ☒	No ☐
Chemical Products	Yes ☒	No ☐
Other	Yes ☒	No ☐

If Yes is marked, please explain: Small volumes of hazardous materials will be used in research-scale synthetic chemistry and tissue culture experiments. Small volumes of waste will be generated . ^{14}C, ^{3}H, ^{123}I, ^{125}I, ^{131}I, ^{111}In, ^{35}S and ^{32}P isotopes, in non-volatile form, will be used in research experiments (<50mCi total).

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, treated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials to be present on or about the Premises at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws, as hereinafter defined); and the proposed location(s) and method(s) of treatment or disposal for each Hazardous Material, including the estimated frequency, and the proposed contractors or subcontractors. Existing subtenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage or treatment of gasoline, diesel, petroleum, or

other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing subtenants should describe any such actual or proposed activities.

Yes ☐ No ☒

If yes, please explain:_____

_____

_____

4. WASTE MANAGEMENT

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Elxisting subtenants should describe any additional identification numbers issued since the previous certificate.

Yes ☒ No ☐

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing subtenants should describe any new reports filed.

Yes ☐ No ☒

If yes, attach a copy of the most recent report filed.

5. WASTEWATER TREATMENT AND DISCHARGE

5.1 Will your company discharge wastewater or other wastes to:

☐ storm drain? ☒ sewer?

☐ surface water? ☐ no wastewater or other wastes discharged.

Existing subtenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste be treated before discharge?

Yes ☐ No ☒

If yes, describe the type of treatment proposed to be conducted. Existing subtenants should describe the actual treatment conducted.

_____

_____

6. AIR DISCHARGES

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing subtenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes ☐ No ☒

If yes, please describe: _____

_____

_____

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing subtenants should specify any such equipment being operated in, on or about the Premises.

☐ Spray booth(s)
☐ Dip tank(s)
☐ Drying oven(s)
☐ Incinerator(s)
☐ Other (Please describe)
☒ No Equipment Requiring Air Permits

If yes, please describe: _____

_____

_____

6.3 Please describe (and submit copies of with this Hazardous Materials Disclosure Certificate) any reports you have filed in the past thirty-six months with any governmental or quasi-governmental agencies or authorities related to air discharges or clean air requirements and any such reports which have been issued during such period by any such agencies or authorities with respect to you or your business operations.

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("Management Plan") or Hazardous Materials Business Plan and Inventory ("Business Plan") pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing subtenants should indicate whether or not a Management Plan is required and has been prepared.

Yes ☒ No ☐

If yes, attach a copy of the Management Plan or Business Plan. Existing subtenants should attach a copy of any required updates to the Management Plan or Business Plan. In Process

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises listed or regulated under Proposition 65? Existing subtenants should indicate whether or not there are any new Hazardous Materials being so used which are listed or regulated under Proposition 65.

Yes ☒ No ☐

If yes, please explain: acrylamide, chloroform, cisplatin, dichloromethane (methylene chloride), ethyleneimine, hydrazine sulfate, methyl iodide, mitomycin C, pyridine, radionuclides (when a license is obtained), streptozotocin (streptozocin), trypan blue (commercial grade), aspirin, fluorouracil, paclitaxel, and streptomycin sulfate.

8. ENFORCEMENT ACTIONS AND COMPLAINTS

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing subtenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes ☐ No ☒

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing subtenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Sublessor pursuant to the provisions of Paragraph 32 of the Master Lease Agreement.

_____

_____

_____

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes ☐ No ☒

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and other documents related thereto as requested by Sublessor. Existing subtenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Sublessor pursuant to the provisions of Paragraph 32 of the Master Lease Agreement.

_____

_____

_____

8.3 Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing subtenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises and the current status of any such problems or complaints.

Yes ☐ No ☒

If yes, please describe. Existing subtenants should describe any such problems or complaints not already disclosed to Sublessor under the provisions of the signed Sublease Agreement and the current status of any such problems or complaints.

9. PERMITS AND LICENSES

9.1 Attach copies of all permits and licenses issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any Hazardous Materials permits, wastewater discharge permits, air emissions permits, and use permits or approvals. Existing subtenants should attach copies of any new permits and licenses as well as any renewals of pen-nits or licenses previously issued.

Permits will be sent in upon completion of move and completion of forms.

As used herein, "Hazardous Materials" shall mean and include any substance that is or contains (a) any "hazardous substance" as now or hereafter defined in § 10 1 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (42 U.S.C. § 9601 et seq.) or any regulations promulgated under CERCLA; (b) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901 et seq.) or any regulations promulgated under RCRA; (c) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("TSCA") (15 U.S.C. § 2601 et seq.) or any regulations promulgated under TSCA; (d) petroleum,

petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (f) polychlorinated biphenyls; (g) lead and lead-containing materials; or (h) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the Premises or any adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws; and "Environmental Laws" shall mean and include (a) CERCLA, RCRA and TSCA; and (b) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (i) pollution, (ii) the protection or regulation of human health, natural resources or the environment, (iii) the treatment, storage or disposal of Hazardous Materials, or (iv) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

The undersigned hereby acknowledges and agrees that this Hazardous Materials Disclosure Certificate is being delivered to Sublessor and Master Lessor in connection with the evaluation of a Sublease Agreement and, if such Sublease Agreement is executed, will be attached thereto as an exhibit. The undersigned further acknowledges and agrees that if such Sublease Agreement is executed, this Hazardous Materials Disclosure Certificate will be updated from time to time in accordance with Paragraph 32 of the Master Lease Agreement. The undersigned further acknowledges and agrees that the Sublessor and Master Lessor and their respective partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Sublease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Sublease Agreement. I [print name] GEORGE TIDMARSH , acting with full authority to bind the (proposed) Sublessee and on behalf of the (proposed) Sublessee, certify, represent and warrant that the information contained in this certificate is true and correct.

(PROSPECTIVE) TENANT:

THRESHOLD PHARMACEUTICALS, INC.,
a DELAWARE corporation

By: /s/ GEORGE F. TIDMARSH

Title: PRESIDENT AND FOUNDER
Date: DECEMBER 05, 2002

INITIALS:
Sublessor: _____

Sublessee: GT

Attachment for section 2.2
List of hazardous materials

Chemicals

The chemicals listed below (along with estimated annual usage) will be stored in room 316 in chemical cabinets. Chemical wastes will be disposed of by Onyx Environmental.

Ether	50 L
Acetonitrile	25 L
Ethyl acetate	50 L
Hexane	50 L
Dimethylformammide	2L
Methylene Chloride	50 L
Methyl alcohol	20 L
Ethyl alcohol	20 L
1,4-Dioxane	1L
Tetrahydrofuran	2L
Hydrochloric acid (10M)	2L
Trifluoroacetic acid	1L
Ammonia	1L
Triethylamine	1L
Sodium Hydroxide (solid)	2Kg

Biohazard Waste

We are using human tumor cell lines for experimental purposes. Solid waste material, including pipets, tissue culture dishes, and cells will be temporarily stored on-site (in appropriately labeled waste containers), and will be routinely removed by Stericycle. The estimated annual throughput, based on current usage, is 1000 pounds.

Radioactive Waste

We have applied for a radioactivity license which covers the usage of the following isotopes with limits as listed: 14-Carbon (10 mCi), 3-Hydrogen (10 mCi), 131-Iodine (4 mCi), 125-Iodine (4 mCi), 123-Iodine (4 mCi), 111-Indium (4 mCi), 32-Phosphorus (10 mCi), and 35-SulfUr (10 mCi). Stock supplies of radioisotopes, and radioactive waste will be stored in room 312. Liquid waste resulting from use of 14-Carbon and 3-Hydrogen will be disposed via POTW (publicly owned treatment works), in accordance with the State of California Department of Health Services radiologies guidelines. Radioactive waste resulting from usage of isotopes with short half-lives (< 90 days) will be decayed on-site for seven half-lives. Other liquid and solid radioactive waste will be routinely picked up by PWN Environmental.

Exhibit 10.5

AMENDED AND RESTATED LEASE AGREEMENT

BY AND BETWEEN

HMS GATEWAY OFFICE L.P.,
a Delaware limited partnership

AS LANDLORD

and

ADVANCED MEDICINE, INC.,
a Delaware corporation

AS TENANT

DATED January 1, 2001

Exhibit A

TABLE OF CONTENTS

Exhibit	
A	Base Building Construction Agreement
A-l	Preliminary Specifications for Base Building Improvements
A-2	Site Plan
B	Premises Construction Agreement
B-l	Description of “Warm Shell” Improvements
C	Additional Operational Guidelines
D	Rules and Regulations
E	Hazardous Materials Disclosure Certificate
F	Tenant’s Property
G	Memorandum of Lease
H	Deferred Allowance Amortization Memorandum

AMENDED AND RESTATED LEASE AGREEMENT

BASIC LEASE INFORMATION

Lease Date:	January 1, 2001
Landlord:	HMS Gateway Office, L.P. a Delaware limited partnership
Landlord's Address:	c/o Hines 101 California Street, Suite 1000 San Francisco, California 94111-5848 Attention: Tom Kruggel *All notices sent to Landlord under this Lease shall be sent to the above address, with copies to:* Hines 651 Gateway Boulevard, Suite 1140 South San Francisco, California 94080 Attention: Catherine Fogelman
Tenant:	Advanced Medicine, Inc., a Delaware corporation
Tenant's Contact Person:	Marty Glick
Tenant's Address:	901 Gateway Boulevard South San Francisco, California 94080
Premises Square Footage:	Sixty thousand (60,000) square feet, subject to final determination by Landlord's Architect upon the commencement of the Term, such measurement to be made in accordance with BOMA standard definition of gross square footage.
Premises Address:	951 Gateway Boulevard South San Francisco, California
Project:	Parcel B as shown on the Final Parcel Map 99-095 dated March 2000, prepared by Kier & Wright, together with all improvements constructed thereon.
Building (if not the same as the Project):	951 Gateway Boulevard South San Francisco, California

Tenant's Proportionate Share of Project:	100%
Tenant's Proportionate Share of Building:	100%
Commencement Date:	November 1, 2001
Expiration Date:	March 31, 2012
Monthly Base Rent:	1. Monthly Base Rent for the period commencing on the Commencement Date and ending March 31, 2002 shall be

2. Monthly Base Rent for the period commencing April 1, 2002 and ending March 31, 2003 shall be
3. Monthly Base Rent for the period commencing April 1, 2003 and ending March 31, 2004 shall be
4. Monthly Base Rent for the period commencing April 1, 2004 and ending March 31, 2005 shall be
5. Monthly Base Rent for the period commencing April 1, 2005 and ending March 31, 2006 shall be
6. Monthly Base Rent for the period commencing April 1, 2006 and ending March 31, 2007 shall be
7. Monthly Base Rent for the period commencing April 1, 2007 and ending March 31, 2008 shall be
8. Monthly Base Rent for the period commencing April 1, 2008 and ending March 31, 2009 shall be
9. Monthly Base Rent for the period commencing April 1, 2009 and ending March 31, 2010 shall be
10. Monthly Base Rent for the period commencing April 1, 2010 through March 31, 2011 shall be
11. Monthly Base Rent for the period commencing April 1, 2011 and ending March 31, 2012 shall be

The above monthly Base Rent calculations are subject to change after final determination of the Premises square footage by Landlord's Architect and any such adjustment shall be based on a monthly base rate calculated from time to time by dividing the applicable monthly Base Rent specified above by 60,000, and multiplying such monthly base rate by the actual square footage of the Premises.

Permitted Use:	General office and research and development activities associated with biotechnology/ pharmaceutical services. All uses must be in accordance with all applicable Laws.
Unreserved Parking Spaces:	One hundred sixty (160) non-exclusive and undesignated parking spaces. Except as otherwise provided in this Lease to the contrary, the foregoing parking calculation shall remain fixed and shall not be adjusted based upon the final determination of the Premises gross square footage.
Tenant Improvement Allowance:	(*viz.*, per square foot), subject to adjustment following the final determination of the Premises square footage by Landlord's Architect upon the commencement of the Term, and any such adjustment shall be based on an amount equal multiplied by the applicable number of square feet involved.
Deferred Allowance:	Up to (*viz.*, per square foot), subject to adjustment upon the final determination of the Premises square footage by Landlord's Architect. Subject to the right of Tenant to prepay the Deferred Allowance in accordance with and to the extent provided in Section D of ***Exhibit B***, the Deferred Allowance shall be amortized over the initial Term and repaid, together with accrued interest thereon, in accordance with said Section D of ***Exhibit B***. Interest shall accrue on the initial disbursed by Landlord at the per annum rate of and on the second disbursed by Landlord at the per annum rate of

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT is made and entered into by and between Landlord and Tenant as of the Lease Date.

RECITALS

A. Landlord and Tenant are parties to that certain Lease Agreement, dated July 11, 2000 ("**Original 951 Lease**") pursuant to which Landlord agreed to lease to Tenant, and Tenant agreed to lease from Landlord, the Premises which was contemplated to be comprised of a 50,000 square foot building to be constructed on the Project.

B. Tenant has requested that Landlord construct a larger Premises consisting of an approximately 60,000 square foot building.

C. Landlord and Tenant now wish to amend and restate the Original 951 Lease to accommodate Tenant's request for an enlarged Premises, to make corresponding adjustments to the Tenant Improvement Allowance and Rent and to amend other matters as set forth herein.

The defined terms used in this Amended and Restated Lease Agreement which are defined in the Basic Lease Information attached to this Amended and Restated Lease Agreement ("**Basic Lease Information**") shall have the meaning and definition given them in the Basic Lease Information. The Basic Lease Information, the exhibits, the addendum or addenda described in the Basic Lease Information, and this Amended and Restated Lease Agreement are and shall be construed as a single instrument and are referred to herein as the "**Lease**".

OPERATIVE PROVISIONS

1. AMENDMENT, RESTATEMENT, SUPERSESSION AND DEMISE

This Lease shall amend and restate the Original 951 Lease in its entirety and shall supersede all provisions thereof. Landlord and Tenant hereby acknowledge and agree that from and after the date of this Lease, the Original 951 Lease is hereby null, void and of no further force or affect.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, LANDLORD DOES HEREBY LEASE TO TENANT, AND TENANT DOES HEREBY HIRE AND TAKE FROM LANDLORD, the Premises described below (the "**Premises**"), upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. PREMISES

2.1 Definition of Premises, Building, Project, Parking Areas, Common Areas

The "**Premises**" demised by this Lease consist of that certain building (the "**Building**") to be constructed in accordance with the provisions hereof in the area shown on the Site Plan attached

hereto as ***Exhibit A-2***, which Building is to be located in that certain real estate development (the "**Project**") specified in the Basic Lease Information. Subject to the provisions of this Lease, Landlord shall have the right to revise the definition of "**Project**" from time to time as Landlord develops and improves the Project and surrounding real property now or hereafter owned by Landlord or its Affiliates (as hereinafter defined), or sells to third parties portions of the Project or such adjacent properties. If at any time during the Term, Tenant is leasing, in accordance with the terms and conditions of this Lease, less than the entire Building, the "**Premises**" shall be deemed to include only that portion of the Building then leased by Tenant pursuant to this Lease. Tenant shall have the non-exclusive right (in common with the other tenants, Landlord and any other person granted use by Landlord) to use the Common Areas (as hereinafter defined), except that, with respect to the Project's parking areas (the "**Parking Areas**"), Tenant shall have only the rights set forth in Paragraph 50 below. No easement for light or air is incorporated in the Premises. For purposes of this Lease, the term "**Common Areas**" shall mean all areas and facilities (i) outside the Premises and outside other buildings occupied or intended to be occupied by tenants, and (ii) either within the exterior boundary line of the Project or within the exterior boundary lines of properties abutting the Project, which areas and facilities are from time to time provided and designated by Landlord for the non-exclusive use of Landlord, Tenant and other tenants of the Project or of the properties abutting the Project and their respective employees, guests and invitees, including, without limitation, the Parking Areas.

2.2 Construction of Base Building Improvements and Tenant Improvements; Special Provisions Relating to Expansion Approvals

(a) Landlord shall cause the construction of the Base Building Improvements in accordance with the terms and conditions of the Base Building Construction Agreement attached hereto as ***Exhibit A***. The Base Building Improvements are generally described on***Exhibit A-1*** hereto. Additionally, Tenant shall cause the construction of certain tenant improvements in the interior of the Premises in accordance with the terms and conditions of the Premises Construction Agreement attached hereto as ***Exhibit B***.

(b) Notwithstanding anything to the contrary contained in this Lease or the Exhibits hereto, Tenant shall be solely responsible for all costs and expenses incurred by Landlord in connection with the increase in the square footage of the Premises from approximately 50,000 square feet (as contemplated under the Original 951 Lease) to approximately 60,000 square feet (as provided for hereunder) (the "**Additional Expansion Costs**"), excluding, however, the costs of constructing the Base Building Improvements to be paid by Landlord pursuant to ***Exhibit A*** hereto. The "Additional Expansion Costs" shall include, without limitation, all architectural and engineering fees and expenses incurred by Landlord in connection with the expansion of the Premises (including, without limitation, all costs of preparing the Base Building Plans and Specifications (as defined within ***Exhibit A*** attached hereto)), all permitting fees, levies, assessments and other fees imposed by the City, the costs and expenses of preparing all submissions required to be made to the City, all costs of preparing and implementing any transportation demand management plan, and all other fees, costs and expenses incurred in connection with the obtaining of the Expansion Approvals. The Additional Expansion Costs shall be deemed "Additional Rent" hereunder and shall be due and payable by Tenant to Landlord within ten (10) days following demand.

(c) Without limiting the terms of Paragraph 2.2(b) above, Tenant shall be solely responsible for performing all obligations required by the City to be performed by Landlord or Tenant prior to or during the Term under the Revised Conditions of Approval (as hereinafter defined), all to the extent that such obligations were not imposed by the Original Conditions of Approval (as hereinafter defined). Without limiting the generality of the foregoing, Tenant shall (i) implement the Transportation Demand Management Program, dated December 4, 2000, prepared by Sequoia Solutions Consulting (the "**TDM**"), including, without limitation, conducting quarterly employee surveys, preparing and submitting to the City an annual TDM Report and, if necessary, cooperating with the City and the Peninsula Congestion Relief Alliance in identifying and implementing changes to the TDM Program from time to time, all as required by Section A.4 of the Revised Conditions of Approval, (ii) pay all costs associated with the TDM, including, without limitation, the actual costs of preparing the TDM and the costs of installing an electric vehicle charging station and designated and protected motorcycle parking, and (iii) pay any additional Oyster Point Overpass fees assessed by the City in connection with the issuance of the Expansion Approvals, including, without limitation, Oyster Point Overpass fees assessed pursuant to Section B.3 of the Revised Conditions of Approval. Tenant shall pay all costs due under this Paragraph 2.2(c) directly to the party or parties to whom said amounts are owed. In the event that Landlord shall pay any such amounts, then said sums shall be deemed Additional Rent hereunder and shall be paid to Landlord within ten (10) days of demand. As used herein, "**Original Conditions of Approval**" means the "Proposed Conditions of Approval," PP-97-063/Mod 1; Neg. Dec. No. ND-97-063/Mod 1, adopted at the September 9, 1998 Redevelopment Agency meeting, and "**Revised Conditions of Approval**" means the "Proposed Conditions of Approval," PP-97-063/Mod 3 & V-97-063/Mod 3, adopted at the December 13, 2000 Redevelopment Agency meeting.

2.3 Changes to Common Area

(a) Landlord has the right, in its sole and absolute discretion, from time to time, to: (i) make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces (provided, however, that Landlord shall not have the right, except as otherwise provided herein, to reduce the total number of parking spaces below the number allocated to Tenant in the Basic Lease Information), Parking Areas, ingress, egress, direction of driveways, entrances, corridors and walkways; (ii) close temporarily any of the Common Areas for maintenance or construction purposes so long as reasonable access to the Premises remains available; (iii) add additional buildings and improvements to the Common Areas or remove existing buildings or improvements therefrom; (iv) use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project or any portion thereof so long as reasonable access to the Premises and the loading area serving the Premises remains available; and (v) do and perform any other acts or make any other changes in, to or with respect to the Common Areas and the Project as Landlord may, in its sole and absolute discretion, deem to be appropriate.

(b) Notwithstanding the terms of Paragraph 2.3(a) above, Tenant understands and acknowledges that Landlord will during the Term be developing the Project and other lands owned by Landlord for Tenant and other tenants or occupants and that from time to time, whether during periods of construction or otherwise, Landlord may be unable to provide the full number of parking spaces allocated to Tenant under this Lease in the Parking Areas. During

such periods, Landlord shall have the right to provide parking to Tenant on properties reasonably proximate to the Project (the "**Adjacent Properties**") or through the use of valets or parking attendants on the Parking Areas or the Adjacent Properties, provided only that Tenant shall at all times have parking for the number of automobiles contemplated under this Lease.

3. TERM

3.1 Commencement Date

The term of this Lease (the "**Term**") shall commence on November 1, 2001 (the "**Commencement Date**") and shall expire on March 31, 2012 (the "**Expiration Date**").

4. RENT

4.1 Monthly Base Rent

Commencing on the Commencement Date Tenant shall pay to Landlord, in advance on the first day of each month, without further notice or demand and without offset or deduction, the monthly installments of rent specified in the Basic Lease Information (the "**Monthly Base Rent**"). If the actual expiration or termination of the Term of this Lease is not the last day of a calendar month, a prorated installment of Rent based on a per diem calculation shall be paid for the fractional calendar month during which the Rent commences or the Term expires or terminates.

4.2 Additional Rent

This Lease is intended to be a triple-net Lease with respect to Landlord; and subject to Paragraph 13.2 below, the Base Rent owing hereunder is (1) to be paid by Tenant absolutely net of all costs and expenses relating to Landlord's ownership and operation of the Project and the Building, and (2) not to be reduced, offset or diminished, directly or indirectly, by any cost, charge or expense payable hereunder by Tenant or by others in connection with the Premises, the Building and/or the Project or any part thereof. The provisions of this Paragraph 4.2 for the payment of Tenant's Proportionate Share(s) of Expenses (as hereinafter defined) are intended to pass on to Tenant its share of all such costs and expenses. In addition to the Base Rent, Tenant shall pay to Landlord, in accordance with this Paragraph 4, Tenant's Proportionate Share(s) of all costs and expenses paid or incurred by Landlord in connection with the ownership, operation, maintenance, management and repair of the Premises, the Building and/or the Project or any part thereof (collectively, the "**Expenses**"), including, without limitation, all the following items (the "**Additional Rent**"):

1. *Taxes and Assessments.* All real estate taxes and assessments, which shall include any form of tax, assessment, fee, license fee, business license fee, levy, penalty (if a result of Tenant's delinquency), or tax (other than net income, estate, succession, inheritance, transfer or franchise taxes), imposed by any authority having the direct or indirect power to tax, or by any city, county, state or federal government or any improvement or other district or division thereof, whether such tax is (i) determined by the area of the Premises, the Building and/or the Project or any part thereof, or the Rent and other sums payable hereunder by Tenant or by other tenants, including, but not limited to, any gross income or excise tax levied by any of the foregoing authorities with respect to receipt of Rent and/or other sums due under this Lease; (ii) upon any

legal or equitable interest of Landlord in the Premises, the Building and/or the Project or any part thereof; (iii) upon this transaction or any document to which Tenant is a party creating or transferring any interest in the Premises, the Building and/or the Project; (iv) levied or assessed in lieu of, in substitution for, or in addition to, existing or additional taxes against the Premises, the Building and/or the Project, whether or not now customary or within the contemplation of the parties; or (v) surcharged against the parking area. Tenant and Landlord acknowledge that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such purposes as fire protection, street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services which may formerly have been provided without charge to property owners or occupants. It is the intention of the parties that all new and increased assessments, taxes, fees, levies and charges due to any cause whatsoever are to be included within the definition of real property taxes for purposes of this Lease. "Taxes and assessments" shall also include legal and consultants' fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes, Landlord specifically reserving the right, but not the obligation, to contest by appropriate legal proceedings the amount or validity of any taxes. In the event Landlord elects not to contest the real property taxes and assessments levied against the Building with respect to any calendar year during the Term, and if Tenant demonstrates to Landlord's reasonable satisfaction that such a contest would likely result in a reduction of such taxes and assessments, then Tenant shall have the right to retain a consultant to prosecute such contest, subject to Landlord's reasonable approval of the identity of such consultant. Such contest shall be conducted at Tenant's sole cost and expense, provided that if Tenant prevails in such contest, the reasonable fees and costs of Tenant's consultants shall, to the extent of any actual savings resulting from such contest, be equitably shared by Tenant and other tenant(s) who receive the benefit of such savings. Tenant shall have the right to deduct from its payments of Additional Rent the shares of such fees and costs to be charged to other tenants, as reasonably determined by Landlord, and Landlord shall cause such amounts to be billed or charged to the other benefited tenant(s).

2. *Insurance.* All insurance premiums for the Building and/or the Project or, subject to clause (i) of the paragraph immediately following Paragraph 4.2(8) below, any part thereof, including premiums for "all risk" fire and extended coverage insurance, commercial general liability insurance, rent loss or abatement insurance, earthquake insurance, flood or surface water coverage, and other insurance as Landlord deems necessary in its sole discretion, and any deductibles paid under policies of any such insurance.

3. *Utilities.* The cost of all Utilities (as hereinafter defined) serving the Premises, the Building and the Common Areas that are not separately metered to Tenant, any assessments or charges for Utilities or similar purposes included within any tax bill for the Building or the Common Area, including, without limitation, entitlement fees, allocation unit fees, and/or any similar fees or charges and any penalties (if a result of Tenant's delinquency) related thereto, and any amounts, taxes, charges, surcharges, assessments or impositions levied, assessed or imposed upon the Building or the Common Areas, or any part thereof, or upon Tenant's use and occupancy thereof, as a result of any rationing of Utility services or restriction on Utility use affecting the Building and/or the Common Areas, as contemplated in Paragraph 5 below (collectively, "**Utility Expenses**").

4. *Common Area Expenses.* All costs to operate, maintain, repair, replace, supervise, insure and administer the Common Areas, including supplies, materials, labor and equipment used in or related to the operation and maintenance of the Common Areas, including parking areas (including, without limitation, all costs of resurfacing and restriping parking areas), signs and directories on the Building and/or the Project, landscaping (including maintenance contracts and fees payable to landscaping consultants), amenities, sprinkler systems, sidewalks, walkways, driveways, curbs, lighting systems and security services, if any, provided by Landlord for the Common Areas.

5. *Parking Charges.* Any parking charges or other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority or insurer in connection with the use or occupancy of the Building or the Project.

6. *Maintenance and Repair Costs.* Except for costs which are the responsibility of Landlord pursuant to Paragraph 13.2 below, all costs to maintain, repair, and replace the Premises, the Building and/or the Common Areas or any part thereof, including, without limitation, (i) all costs paid under maintenance, management and service agreements such as contracts for janitorial, security and refuse removal, (ii) all costs to maintain, repair and replace the roof coverings of the Building, (iii) all costs to maintain, repair and replace the heating, ventilating, air conditioning, plumbing, sewer, drainage, electrical, fire protection, life safety and security systems and other mechanical and electrical systems and equipment serving the Premises, the Building and/or the Common Areas or any part thereof (collectively, the "**Systems**"), all to the extent that Landlord or Landlord's Agents perform such tasks.

7. *Life Safety Costs.* All costs to install, maintain, repair and replace all life safety systems, including, without limitation, all fire alarm systems, serving the Premises, the Building and/or the Common Areas or any part thereof (including all maintenance contracts and fees payable to life safety consultants) whether such systems are or shall be required by Landlord's insurance carriers, Laws (as hereinafter defined) or otherwise, all to the extent that Landlord or Landlord's Agents perform such tasks.

8. *Management and Administration.* All costs for management and administration of the Premises, the Building and/or the Project or any part thereof, including, without limitation, a property management fee equal to two percent (2%) of the annual Rent derived from the Building, accounting, auditing, billing, postage, legal and accounting costs and fees for licenses and permits related to the ownership and operation of the Project (but specifically excluding any salaries and benefits of employees of Landlord or the property manager of the Building).

9. *Operational Fees Related To Expansion Approvals.* Any charges or other costs which are paid or incurred by Landlord during the Term in relation to, as a result of, or as a condition, to obtaining the Expansion Approvals (as defined in ***Exhibit A*** attached hereto), including, without limitation, (i) any fees, levies or assessments charged by the City, (ii) the salaries of any parking administrators or managers and all other employees or independent contractors who have been hired in response to any condition or obligation imposed in connection with the issuance of the Expansion Approvals, (iii) the costs and expenses incurred in the establishment, management and administration of any transportation demand management

plan, (iv) the costs and expenses incurred in the management, administration and operation of any shuttle service, and (v) any similar costs and expenses incurred in relation to any program instituted as a result of, or as a condition to, obtaining the Expansion Approvals, whether or not such charges, costs and/or expenses relate solely to the Project.

10. *Gateway Operational Expenses.* All charges, assessments, costs or fees levied by any association or entity of which the Project or any part thereof is a member or to which the Project or any part thereof is subject (including, without limitation, the Gateway Property Owners' Association), or levied under or imposed by any reciprocal easement agreement, joint operating agreement or other document, instrument or agreement to which the Project or any part thereof is subject.

Notwithstanding anything in this Paragraph 4.2 to the contrary, (i) Tenant shall not be responsible for the payment of any Expenses which relate to or benefit solely another building within the Project occupied or intended to be occupied by tenants or for which Landlord receives full reimbursement from other tenants, and (ii) with respect to all sums payable by Tenant as Additional Rent under this Paragraph 4.2 for the replacement of any item or the construction of any new item in connection with the physical operation of the Premises, the Building or the Project *(i.e.,* HVAC, roof membrane or coverings and parking area) which is a capital item the replacement of which would be capitalized under generally accepted accounting principles consistently applied, Tenant shall be required to pay only the prorata share of the cost of the item falling due within the Term (including any Renewal Term) based upon the amortization of the same over the useful life of such item, as reasonably determined by Landlord. Such share shall be paid by Tenant on a monthly basis throughout the Term (rather than in a lump sum when incurred by Landlord).

4.3 Adjustment to Additional Rent

Notwithstanding any other provision herein to the contrary, if the Building is not fully occupied during any year of the Term, an adjustment shall be made in computing Additional Rent for such year so that Additional Rent shall be computed as though the Building had been fully occupied during such year; provided, however, that in no event shall Landlord collect in total, from Tenant and all other tenants of the Building, an amount greater than one hundred percent (100%) of the actual Expenses during any year of the Term.

4.4 Payment of Additional Rent

4.4.1 Expense Statement

Upon the Commencement Date, Landlord shall submit to Tenant an estimate of monthly Additional Rent for the period between the Commencement Date and the following December 31 and Tenant shall pay such estimated Additional Rent on a monthly basis, in advance, on the first day of each month. Tenant shall continue to make said monthly payments until notified by Landlord of a change therein. By April 1 of each calendar year, Landlord shall endeavor to provide to Tenant a statement (the "**Expense Statement**") showing the actual Additional Rent due to Landlord for the prior calendar year, to be prorated during the first year from the Commencement Date. If the total of the monthly payments of Additional Rent that

Tenant has made for the prior calendar year is less than the actual Additional Rent chargeable to Tenant for such prior calendar year, then Tenant shall pay the difference in a lump sum within ten (10) days after receipt of such statement from Landlord. Any overpayment by Tenant of Additional Rent for the prior calendar year shall be credited towards the Additional Rent next due.

4.4.2 Calculation of Additional Rent

Landlord's then-current annual operating and capital budgets for the Building and the Project shall be used for purposes of calculating Tenant's monthly payment of estimated Additional Rent for the current year. Landlord shall make the final determination of Additional Rent for the year in which this Lease terminates as soon as possible after termination of such year. Even though the Term has expired and Tenant has vacated the Premises, Tenant shall remain liable for payment of any amount due to Landlord in excess of the estimated Additional Rent previously paid by Tenant, and, conversely, Landlord shall promptly return to Tenant any overpayment. Failure of Landlord to submit statements as called for herein shall not be deemed a waiver of Tenant's obligation to pay Additional Rent as herein provided.

4.4.3 Tenant's Proportionate Share(s)

With respect to Expenses which Landlord allocates to the Building, Tenant's "**Proportionate Share**" shall be the percentage set forth in the Basic Lease Information as Tenant's Proportionate Share of the Building, as adjusted by Landlord from time to time for a remeasurement of or changes in the physical size of the Premises or the Building. With respect to Expenses which Landlord allocates to the Project, Tenant's "**Proportionate Share**" shall be the percentage set forth in the Basic Lease Information as Tenant's Proportionate Share of the Project as adjusted by Landlord from time to time in connection with the construction of additional buildings within the Project or a remeasurement of or changes in the physical size of the Premises or the Project, whether such changes in size are due to an addition to or a sale or conveyance of a portion of the Project or otherwise. Notwithstanding the foregoing, Landlord may equitably adjust Tenant's Proportionate Share(s) for all or part of any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Building and/or the Project or that varies with the occupancy of the Building and/or the Project; provided, however, that Tenant's prorata allocation of any such Expense shall not be disproportionate to any other tenant's prorata allocation of such Expense.

4.4.4 Tenant's Audit Rights

Provided that Tenant is not in Default under the terms of this Lease, Tenant, at its sole cost and expense, shall have the right within sixty (60) days after the delivery of each Expense Statement to review and audit Landlord's books and records regarding such Expense Statement for the sole purpose of determining the accuracy of such Expense Statement. Such review or audit shall be performed by a nationally recognized accounting firm that calculates its fees with respect to hours actually worked and that does not discount its time or rate (as opposed to a calculation based upon percentage of recoveries or other incentive arrangement), shall take place during normal business hours in the office of Landlord or Landlord's property manager and shall be completed within three (3) business days after the commencement thereof. If Tenant does not

so review or audit Landlord's books and records, Landlord's Expense Statement shall be final and binding upon Tenant. In the event that Tenant determines on the basis of its review of Landlord's books and records that the amount of Expenses paid by Tenant pursuant to this Paragraph 4 for the period covered by such Expense Statement is less than or greater than the actual amount properly payable by Tenant under the terms of this Lease, Tenant shall promptly pay any deficiency to Landlord or, if Landlord concurs with the results of Tenant's audit, Landlord shall promptly refund any excess payment to Tenant, as the case may be. Landlord shall pay for any reasonable audit expenses if such excess payment exceeds the aggregate Expenses in Landlord's Expense Statement by seven percent (7%).

4.5 General Payment Terms

The Base Rent, Additional Rent and all other sums payable by Tenant to Landlord hereunder, including, without limitation, any Late Charges, as defined below, assessed pursuant to Paragraph 6 below, any interest assessed pursuant to Paragraph 44 below, and any repayments of the Deferred Allowance, are referred to collectively as the "**Rent**." All Rent shall be paid without deduction, offset or abatement (except as specifically provided in this Lease) in lawful money of the United States of America. Checks are to be made payable to HMS Gateway Office, L.P. and shall be mailed: c/o Hines, 101 California Street, Suite 1000, San Francisco, California 94111-5848, Attention: Tom Kruggel, or to such other person or place as Landlord may, from time to time, designate to Tenant in writing. The Rent for any fractional part of a calendar month at the commencement or termination of the Lease term shall be a prorated amount of the Rent for a full calendar month based upon the number of days in the month of the commencement or termination of the Lease term, as applicable.

4.6 Special Provisions regarding Bridge

Notwithstanding anything in this Section 4 to the contrary, Tenant shall not be required to pay Base Rent or Additional Rent on the Bridge (as defined in ***Exhibit A*** hereto), if any, and the square footage of the Bridge shall not be taken into account in determining Tenant's Proportionate Shares of the Building and the Project.

5. UTILITY EXPENSES

5.1 Tenant's Obligation to Pay

Tenant shall pay the cost of all water, sewer use, sewer discharge fees, gas, heat, electricity, refuse pick-up, janitorial service (including, without limitation, exterior and interior window washing), telephone, cable T.V., telecommunications facilities and all materials and services or other utilities (collectively, "**Utilities**") billed or metered separately to the Premises and/or Tenant, together with all taxes, assessments, charges and penalties added to or included within such cost. Tenant acknowledges that the Premises, the Building and/or the Project may become subject to the rationing of Utility services or restrictions on Utility use as required by a public utility company, governmental agency or other similar entity having jurisdiction thereof. Tenant acknowledges and agrees that its tenancy and occupancy hereunder shall be subject to such rationing or restrictions as may be imposed upon Landlord, Tenant, the Premises, the Building and/or the Project, and Tenant shall in no event be excused or relieved from any covenant or

obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant agrees to comply with energy conservation programs implemented by Landlord by reason of rationing, restrictions or Laws.

5.2 Limitation of Landlord's Liability for Interruption of Utilities

(a) Landlord shall not be liable for any loss, injury or damage to property caused by or resulting from any variation, interruption, or failure of Utilities due to any cause whatsoever, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations, improvements, or due to accident, strike, or conditions or other events shall be deemed an eviction of Tenant or relieve Tenant from any of its obligations hereunder; provided, however, that Landlord shall give Tenant not less than forty-eight (48) hours' notice of any interruption of Utilities planned in advance by Landlord. Landlord shall also use reasonable efforts to notify Tenant of any planned interruption of Utilities by any Utility service provider, provided that Landlord obtains actual knowledge of such planned interruption. In no event shall Landlord be liable to Tenant for any damage to the Premises or for any loss, damage or injury to any property therein or thereon occasioned by bursting, rupture, leakage, failure or overflow of any plumbing or other pipes (including, without limitation, water, steam, and/or refrigerant lines), sprinklers, tanks, drains, drinking fountains or washstands, or other similar cause in, above, upon or about the Premises, the Building or the Project.

(b) Notwithstanding the provisions of Paragraph 5.2(a) above, if any Utility Services to the Premises are interrupted or interfered with as the result of the negligence or willful misconduct of any contractors engaged by Landlord to perform services at the Project, then Landlord shall use commercially reasonable efforts to pursue any claims for compensation or reimbursement available to Landlord against such contractors to the extent of any losses suffered by Tenant and shall make any monies received available to Tenant after allowance for Landlord's costs of collection. In addition to the foregoing, if any policy of insurance maintained by Landlord with respect to the Premises provides coverage for losses incurred due to the failure of Utilities, then Landlord shall make a claim under such policy to the extent of any losses suffered by Tenant, and shall make the proceeds received, if any, available to Tenant after allowance for Landlord's costs of collection.

6. LATE CHARGE

Notwithstanding any other provision of this Lease, Tenant hereby acknowledges that late payment to Landlord of Rent, or other amounts due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any Rent or other sums due from Tenant are not received by Landlord or by Landlord's designated agent when due, and if Tenant does not cure such failure within five (5) days after the due date (the "**Grace Period**"), then Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount (the "**Late Charge**"), plus any costs and reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder; provided, however, that Tenant shall have the right to pay Rent during the Grace Period only five (5) times during the Term and, after Tenant has paid Rent during the Grace Period an aggregate of five (5) times, Tenant shall pay to Landlord a Late

Charge on any Rent or other sums due hereunder that are not received by Landlord or Landlord's designated agent when due. Notwithstanding the foregoing, if Tenant establishes and maintains throughout the Term a direct payment or debit arrangement with a bank or financial institution pursuant to which the Rent due hereunder is automatically paid to Landlord by electronic transfer on the first day of each month, and if Tenant provides Landlord with evidence of such arrangement, then Landlord shall provide Tenant with notice of any late payment of Rent prior to the imposition of a Late Charge. Landlord and Tenant hereby agree that such Late Charge represent a fair and reasonable estimate of the cost that Landlord will incur by reason of Tenant's late payment and shall not be construed as a penalty. Landlord's acceptance of such Late Charge shall not constitute a waiver of Tenant's default with respect to such overdue amount or estop Landlord from exercising any of the other rights and remedies granted under this Lease.

INITIALS:	/s/ JAMES C. BUIE, JR.	/s/ A. GREG STURMER
	Landlord	*Tenant*

7. LETTER OF CREDIT

(a) *Delivery of Letter of Credit.* Tenant has previously delivered to Landlord the letter of credit (the "**Letter of Credit**") in the amount of described in the 901 Gateway Lease (as hereinafter defined). As more particularly described in the 901 Gateway Lease, the Letter of Credit serves as security for the full and faithful performance of Tenant's covenants and obligations under the 901 Gateway Lease and this Lease. Landlord shall have the right to draw upon the Letter of Credit and use the proceeds therefrom for the purposes specified in the 901 Gateway Lease. The rights and obligations of the parties with respect to the Letter of Credit shall be as set forth in the 901 Gateway Lease. As used herein, the "**901 Gateway Lease**" means the Lease Agreement by and between Landlord and Tenant, dated as of January 1, 2001, relating to certain premises (the "**901 Gateway Premises**") commonly known as 901 Gateway Boulevard, South San Francisco, California, as more particularly described therein.

(b) *Bifurcation of Letter of Credit.* Notwithstanding anything to the contrary contained herein or in the 901 Gateway Lease, if requested by Landlord at any time following the date of this Lease, Tenant shall cause the LC Issuing Bank (as defined in the 901 Gateway Lease) to bifurcate the Letter of Credit into two separate letters of credit, one securing Tenant's obligations under the 901 Gateway Lease and the other securing Tenant's obligations under this Lease. Such bifurcated letters of credit shall each be in an amount specified by Landlord, provided that the aggregate amount of such letters of credit shall equal the amount of the Letter of Credit immediately prior to such bifurcation. Concurrently with the bifurcation of the Letter of Credit, Landlord and Tenant shall enter into a modification of the 901 Gateway Lease and a modification of this Lease, which modifications shall amend Paragraph 7 of the 901 Gateway Lease and this Paragraph 7 to provide for separate, stand-alone letter of credit provisions in the 901 Gateway Lease and this Lease.

8. POSSESSION

8.1 Tenant's Right of Possession

Subject to Paragraph 8.2, Tenant shall be entitled to possession of the Premises upon the substantial completion of the Base Building Improvements.

For the purposes of this Lease, the Base Building Improvements shall be deemed to be "substantially completed" when Landlord's Architect and Contractor have both certified in writing that the Base Building Improvements have been substantially completed in accordance with the plans and specifications therefor, subject only to items of a "punch-list" nature which do not materially affect the use or functionality of the space.

8.2 Delay in Performance of Covenants Related to Base Building Improvements

Except as expressly provided in Paragraph 8.3 below, if for any reason whatsoever Landlord cannot perform any covenant contained in this Lease or in any exhibit hereto relating to the design and construction of the Base Building Improvements, this Lease shall not be void or voidable and shall not entitle Tenant to terminate this Lease, nor shall Landlord, or Landlord's agents, advisors, employees, partners, shareholders, directors, invitees or independent contractors (collectively, "**Landlord's Agents**"), be liable to Tenant for any loss or damage resulting therefrom, nor shall such failure affect the obligations of Tenant under this Lease, including, without limitation, the obligation to pay Rent commencing on the Commencement Date.

8.3 Tenant's Right to Rent Abatement

(a) Subject to Paragraph 8.3(b) below, if for any reason Landlord fails to complete the milestones set forth below (each, a "**Milestone**") on or before the outside date for performance specified below (each, a "**Milestone Date**"), and if as a direct result of such failure, Tenant's Contractor is delayed in the substantial completion of the Tenant Improvements (as defined within ***Exhibit B*** attached hereto) which delay would not have occurred but for Landlord's failure to meet such Milestone Date, then Tenant shall be entitled to an abatement of Monthly Base Rent in an amount equal to the proportionate Monthly Base Rent payable per day, multiplied by a number equal to one day for each day that Tenant's Contractor has been so delayed by Landlord's failure to meet such Milestone Dates. For the purposes herein, the Tenant Improvements shall be deemed to be substantially completed on the earlier date to occur of: (i) the date Tenant occupies any portion of the Building, (ii) the date when the Tenant Improvements have been approved by the appropriate governmental agency as being in accordance with its building code and the building permit issued for such improvements, as evidenced by the issuance of a certificate of occupancy or final building inspection approval, as applicable, and (iii) the date that Tenant's Architect and Tenant's Contractor have both certified in writing that the Tenant Improvements have been substantially completed in accordance with the plans and specifications therefor, subject only to items of a "punch-list" nature which do not materially affect the use or functionality of the space. The Milestones and Milestone Dates are as follows:

Milestone	*Milestone Date*
Certificate from Landlord's Architect that the foundation of the Building has been completed ("**Initial Milestone**").	September 8, 2001
Concrete for the metal deck located on the top floor of the Building has been poured ("**Secondary Milestone**").	November 22, 2001

(b) Notwithstanding anything to the contrary contained in Paragraph 8.3(a) above, if Landlord is delayed in completing any Milestone due to Tenant Delays or Force Majeure Events (as hereinafter defined), the Milestone Dates shall be extended for a period equal to the length of such delay. As used herein, "**Tenant Delays**" means any delays caused by Tenant or any employee, agent or representative of Tenant, including, without limitation, delays caused by (i) failure to furnish information in accordance with ***Exhibit A*** and/or ***Exhibit B*** of this Lease, whichever is applicable; (ii) Tenant's request for any special, long lead time materials or installations as part of the Tenant Improvements or the Tenant Requested Base Building Improvements (as defined in ***Exhibit A*** hereto); (iii) Tenant's changes in the Approved Plans (as defined in***Exhibit B*** hereto); (iv) any changes initiated by reason of the disapproval of any plans or drawings or any cost proposals or authorizations resulting in the preparation of revised plans, drawings, cost proposals or authorizations; (v) field changes to construction work; (vi) the delivery, installation or completion of the Tenant Improvements work performed by Contractor (as defined in ***Exhibit B*** hereto); (vii) Tenant's request for any Tenant Requested Base Building Improvements; or (viii) any other act or omission of Tenant. As used herein, "**Force Majeure Events**" means strikes, embargoes, governmental regulations, acts of God, war, civil commotion or other strife, and other events beyond the reasonable control of the party whose performance is affected thereby.

9. USE OF PREMISES

9.1 Permitted Use

(a) The use of the Premises by Tenant and Tenant's agents, advisors, employees, partners, shareholders, directors, invitees and independent contractors (collectively, "**Tenant's Agents**") shall be solely for the Permitted Use specified in the Basic Lease Information and for no other use. Tenant shall not permit any objectionable or unpleasant smoke, dust, gas, noise or vibration to emanate from or near the Premises, and shall use its best efforts to prevent any objectionable odor from emanating from or near the Premises. Tenant shall strictly comply with the measures set forth on ***Exhibit C*** hereto and any additional measures reasonably required by Landlord from time to time to eliminate the emanation of objectionable odors. Tenant shall promptly provide Landlord with copies of all permits issued to Tenant by the Bay Area Air Quality Management District (the "**Air Management District**") and any other governmental agency responsible for or having jurisdiction over matters related to air quality, together with copies of all correspondence between Tenant and the Air Management District or such other agencies. Tenant acknowledges that The Gateway, the real estate development in which the Project is located, is a first-class

office and R&D campus and that "objectionable odors" is a subjective standard. Accordingly, Tenant agrees that if odors in the area of the Building lead to complaints from other tenants and occupants of The Gateway, and if Landlord reasonably determines, based upon observation and/or a review of Tenant's records, that such odors emanated from the Premises, Tenant shall promptly use its best efforts to correct the situation at Tenant's sole cost and expense. Such measures to be taken by Tenant shall include, without limitation, the hiring of special consultants and the making of capital improvements to the Premises. Tenant shall make its laboratory records available to Landlord for review in connection with any complaints by tenants or occupants of the Gateway and as otherwise reasonably requested by Landlord. Any failure of Tenant to comply with its obligations under this Paragraph 9.1(a) shall constitute an immediate Default under this Lease.

(b) The Premises shall not be used to create any nuisance or trespass, for any illegal purpose, for any purpose not permitted by Laws, for any purpose that would invalidate the insurance or increase the premiums for insurance on the Premises, the Building or the Project or for any purpose or in any manner that would unreasonably interfere with other tenants' use or occupancy of the Project. Tenant agrees to pay to Landlord, as Additional Rent, any increases in premiums on policies resulting from Tenant's Permitted Use or any other use or action by Tenant or Tenant's Agents which increases Landlord's premiums or requires additional coverage by Landlord to insure the Premises. Tenant agrees not to overload the floor(s) of the Building.

9.2 Compliance with Governmental Regulations and Private Restrictions

(a) Subject to the terms and conditions of the Lease, Landlord covenants that the Base Building Improvements shall be constructed in compliance with all applicable building code requirements in effect and actively being enforced by the City of South San Francisco (the "**City**") on the date the building permits are issued to the Contractor therefor and substantially in accordance with the Base Building Plans and Specifications. Any claims by Tenant under this Paragraph 9.2 shall be made in writing not later than one (1) year after the Commencement Date of the Lease. In the event Tenant fails to deliver a written claim to Landlord on or before such date, then Landlord shall be conclusively deemed to have satisfied its obligations under this paragraph. The covenants contained in this paragraph are subject to Paragraph 39 below of the Lease and are made specifically and exclusively for the benefit of the original Tenant and any assignee or sublessee under a Permitted Transfer pursuant to Paragraph 23.4 below.

(b) Tenant and Tenant's Agents shall, at Tenant's expense, faithfully observe and comply with (1) all municipal, state and federal laws, statutes, codes, rules, regulations, ordinances, requirements, and orders (collectively, "**Laws**"), now in force or which may hereafter be in force pertaining to the Premises or Tenant's use of the Premises, the Building or the Project, including, without limitation, any Laws requiring installation of fire sprinkler systems, seismic reinforcement and related alterations, whether substantial in cost or otherwise; provided, however; that: except as provided in Paragraph 9.3 below, Tenant shall not be required to make or, except as provided in Paragraph 4 above, pay for, structural changes to the Premises or the Building not related to Tenant's specific use of the Premises unless the requirement for such changes is imposed as a result of any improvements or additions made or proposed to be made at Tenant's request; (2) all recorded covenants, conditions and restrictions affecting the Project ("**Private Restrictions**") now in force or which may hereafter be in force, Landlord hereby

specifically reserving the right to hereafter adopt such Private Restrictions and to impose the same on the Project or any portion thereof, provided that such Private Restrictions adopted after the date hereof shall not unreasonably impair Tenant's use of the Premises for any Permitted Use; and (3) any and all rules and regulations set forth in ***Exhibit D*** and any other rules and regulations now or hereafter promulgated by Landlord (collectively, the "**Rules and Regulations**"). Without limiting the generality of the foregoing, Tenant hereby covenants and agrees for itself, its successors and assigns, and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall Tenant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such Laws or Private Restrictions, shall be conclusive of that fact as between Landlord and Tenant.

9.3 Compliance with Americans with Disabilities Act

Landlord and Tenant hereby agree and acknowledge that the Premises, the Building and/or the Project may be subject to, among other Laws, the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 *et seq.,* including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "**ADA**"). Landlord shall cause the Base Building Improvements to be constructed in compliance with the ADA as currently administered by the City. Any Tenant Improvements to be constructed hereunder or Alterations (as hereinafter defined) made during the Term shall be in compliance with the requirements of the ADA, and all costs incurred for purposes of compliance therewith shall be a part of and included in the costs of the Tenant Improvements or the Alterations, as applicable. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Tenant Improvements strictly complies with all requirements of the ADA. Subject to reimbursement pursuant to Paragraph 4 above, if any barrier removal work or other work is required to the Building, the Common Areas or the Project under the ADA, then such work shall be the responsibility of Landlord; provided, however, that if such work is required under the ADA as a result of Tenant's use of the Premises or any work or Alteration made to the Premises by or on behalf of Tenant, then such work shall be performed by Landlord at the sole cost and expense of Tenant; and provided, further, that if any such work is required under the ADA as a result of another tenant's specific use of its premises or improvements made by another tenant to its premises, then the cost of such work shall be solely chargeable to such tenant and Tenant shall have no responsibility therefor. Except as otherwise expressly provided in this provision, Tenant shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA, including, without limitation, not discriminating against any disabled persons in the operation of Tenant's business in or about the Premises, and offering

or otherwise providing auxiliary aids and services as, and when, required by the ADA. Within ten (10) days after receipt, Tenant shall advise Landlord in writing, and provide Landlord with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises, the Building or the Project; any claims made or threatened orally or in writing regarding noncompliance with the ADA and relating to any portion of the Premises, the Building or the Project; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises, the Building or the Project. Tenant shall and hereby agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's Agents harmless and indemnify Landlord and Landlord's Agents from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Tenant's or Tenant's Agents' violation or alleged violation of the ADA. Landlord shall and hereby agrees to protect, defend (with counsel acceptable to Tenant) and hold Tenant and Tenant's Agents harmless and indemnify Tenant and Tenant's Agents from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Landlord's failure to have the Base Building Improvements constructed in compliance with the ADA as currently administered by the City.

10. ACCEPTANCE OF PREMISES

By taking possession of the Premises hereunder Tenant accepts the Premises as suitable for Tenant's intended use and as being in good and sanitary operating order, condition and repair, AS IS, and without representation or warranty by Landlord as to the condition, use or occupancy which may be made thereof, except for Landlord's express obligations described in ***Exhibit A***, and Landlord's covenant set forth in Paragraph 9.2(a) above. Any exceptions to the foregoing must be by written agreement executed by Landlord and Tenant.

11. SURRENDER

11.1 Surrender at Expiration or Termination

Tenant agrees that on the last day of the Term, or on the sooner termination of this Lease, Tenant shall surrender the Premises to Landlord (i) in good condition and repair (damage by acts of God, fire, and normal wear and tear excepted), but with all interior walls painted or cleaned so they appear painted and, where appropriate, patched, any carpets cleaned, all floors cleaned and waxed, and all plumbing fixtures in good condition and working order and, where appropriate, capped, and (ii) otherwise in accordance with Paragraph 32.9. Normal wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease.

11.2 Removal Obligations and Abandonment of Tenant's Property

On or before the expiration or sooner termination of this Lease, Tenant shall, in accordance with this Paragraph 11, and at Tenant's sole cost and expense, remove, and repair any damage caused by such removal, (A) all of Tenant's Property (as hereinafter defined) and Tenant's signage from the Premises, the Building and the Project, and (B) all Tenant Improvements and Alterations required to be removed pursuant to Paragraph 12 below and Section B.5 of ***Exhibit B*** hereto, whichever is applicable. In addition to the foregoing, upon the written request of Landlord, which request may be given at any time prior to the expiration or sooner termination of this Lease, Tenant shall, at its sole cost and expense, on the expiration or sooner termination of this Lease, remove the Bridge, if any, restore the facades of the Building and the 901 Gateway Premises to a condition required by Landlord, and repair any damage caused by such removal and restoration. Any of Tenant's Property not so removed by Tenant as required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property; provided, however, that Tenant shall remain liable to Landlord for all costs incurred in storing and disposing of such abandoned property of Tenant. All Tenant Improvements and Alterations except those which Tenant is required to remove pursuant to Paragraph 12 below hereto shall remain in the Premises as the property of Landlord.

11.3 Indemnification

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Paragraph 11 and Paragraph 32.9 below, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, reasonable attorneys' fees and costs.

12. ALTERATIONS AND ADDITIONS

12.1 Landlord's Consent Required

Tenant shall not make, or permit to be made, any alteration, addition or improvement (hereinafter referred to individually as an "**Alteration**" and collectively as the "**Alterations**") to the Premises or any part thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alteration which affects the structural portions of the Premises, the Building or the Project or the Systems serving the Premises, the Building and/or the Project or any portion thereof.

12.2 Alterations Permitted Without Landlord's Consent; Removal Requirements

Notwithstanding the foregoing, but subject to the conditions set forth below, Tenant may, without Landlord's consent, make Alterations within the Premises, provided that (i) such Alterations do not affect the structural portions of the Premises, the Building or the Project or the Systems, and (ii) the cost, on an individual project basis, of any Alteration or related series of Alterations is less than Thirty Thousand Dollars ($30,000.00), and all Alterations in the aggregate do not exceed Two Hundred Thirty Thousand Dollars ($230,000.00) over the Term. The Alterations made by Tenant without the consent of Landlord in accordance with this Paragraph 12.2 shall be herein referred to as the "**Permitted Alterations**."

12.3 Alterations at Tenant's Expense

Any Alteration to the Premises shall be at Tenant's sole cost and expense, in compliance with all applicable Laws and all requirements requested by Landlord, including, without limitation, the requirements of any insurer providing coverage for the Premises or the Project or any part thereof, and in accordance with plans and specifications approved in writing by Landlord (except for Permitted Alterations), which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, with respect to Alterations that may be made without Landlord's prior consent as permitted above, Landlord agrees that Tenant shall not be required to submit plans and specifications for prior approval of the Landlord and that Landlord shall not require prior approval of the installing contractor; provided, however, that if Tenant does not obtain the prior approval of plans and specifications for any Alteration, then subject to the terms of Paragraph 12.4(b) below, Landlord may, by notice to Tenant given not later than ninety (90) days prior to the Expiration Date (except in the event of a termination of this Lease prior to the scheduled Expiration Date, in which event no advance notice shall be required), require Tenant, at Tenant's expense, to remove, and repair any damage caused by removal of, any and all such Alterations. If Tenant does not obtain Landlord's prior consent as to the installing contractor, Tenant shall be responsible for maintaining harmonious labor relations with all contractors and service providers servicing the Premises, Building and/or Project. In addition, with respect to any Permitted Alterations made without Landlord's prior consent as permitted above, Tenant agrees to meet with Landlord, at Landlord's request, not more than once in every calendar year, to discuss any such Permitted Alterations that have been made to the Premises (each such meeting being herein referred to as an "**Alterations Meeting**"). Tenant shall provide to Landlord within forty five (45) days after written request as-built plans and specifications for any Alterations (including, without limitation, any Permitted Alterations) made by Tenant to the Premises. Notwithstanding anything in this Lease to the contrary, any approval by Landlord of any drawings, plans or specifications prepared on behalf of Tenant shall not in any way bind Landlord, create any responsibility or liability on the part of Landlord for the completeness of the same, their design sufficiency or compliance with applicable statutes, ordinances or regulations or constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such drawings, plans or specifications, or the improvements to which they relate, but such approval shall merely evidence the consent of Landlord to such drawings, plans or specifications.

12.4 Requirements of Request for Approval

(a) Any Alterations requiring the prior consent of Landlord shall contain a request that Landlord specify in writing to Tenant those Alterations that Tenant will be required to remove in accordance with Paragraph 11.1 upon expiration or sooner termination of this Lease. Upon receipt of such request, Landlord shall make such determination and respond to Tenant within twenty (20) business days of such request. Landlord's failure to respond within such time shall be deemed to mean that Tenant shall not be required to remove such Alterations upon the expiration or sooner termination of this Lease.

(b) In the event Tenant constructs or installs any Permitted Alterations without the consent of Landlord, then Tenant shall have the right at the next succeeding Alterations Meeting to request that Landlord specify in writing whether Tenant will be required to remove all or any portion of such Permitted Alterations upon expiration or sooner termination of this Lease. Upon receipt of such request, Landlord shall make such determination and respond to Tenant within twenty (20) business days of such request. Landlord's failure to respond within such time shall conclusively be deemed to be an irrevocable waiver of Landlord's right to demand their removal.

12.5 Permits Required; Insurance Required

12.5.1 Permits

Before Alterations may begin, valid building permits or other permits or licenses required must be furnished to Landlord, and, once the Alterations begin, Tenant will diligently and continuously pursue their completion. Landlord may monitor construction of the Alterations, either through its own employees or through a construction manager retained by Landlord.

12.5.2 Insurance

Tenant shall maintain during the course of any construction (including, without limitation, during the construction of the Tenant Improvements and any Alterations), at its sole cost and expense, builders' risk insurance for the amount of the completed value of the Alterations and Tenant Improvements on an all-risk non-reporting form covering all improvements under construction, including building materials, and other insurance in amounts and against such risks as Landlord shall reasonably require in connection with the Alterations and Tenant Improvements., including, without limitation, naming Landlord and Landlord's lender as loss payee under any such policy. In addition to and without limitation on the generality of the foregoing, Tenant shall ensure that its contractor(s) procure and maintain in full force and effect during the course of construction a "broad form" commercial general liability and property damage policy of insurance naming Landlord, Tenant and Landlord's lenders as additional insureds. The minimum limit of coverage of the aforesaid policy shall be in the amount of not less than Three Million Dollars ($3,000,000.00) for injury or death of one person in any one accident or occurrence and in the amount of not less than Three Million Dollars ($3,000,000.00) for injury or death of more than one person in any one accident or occurrence, and shall contain a severability of interest clause or a cross liability endorsement. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least One Million Dollars ($1,000,000.00).

12.6 Title to Improvements; Removal Rights; Financing

Except as otherwise expressly stated herein or agreed to in writing between the parties, the Tenant Improvements actually paid for by Tenant and all Alterations, including, but not limited to, heating, lighting, electrical, air conditioning, fixed partitioning, drapery, wall covering and paneling, built-in cabinet work and carpeting installations made by Tenant, together with all property that has become an integral part of the Premises or the Building, shall upon installation become the property of Tenant; provided, however, that title to all such Tenant Improvements, Alterations and property shall automatically transfer to Landlord upon the expiration of the Term or the sooner termination of this Lease without the payment of any consideration or the execution of any transfer documents. Notwithstanding the foregoing, Tenant shall retain title to and ownership of Tenant's Property at all times. For purposes of this Paragraph 12.6 and Paragraph 49.4.1 below, Landlord shall be deemed to have paid for those Tenant Improvements funded out of the Initial Tenant Improvement Allowance (as hereinafter defined) and Tenant shall be deemed to have paid for the remaining Tenant Improvements, including any Tenant Improvements funded out of the Deferred Allowance. As used herein, "Initial Tenant Improvement Allowance" means the initial $46.70 per square foot of the Tenant Improvement Allowance provided by Landlord hereunder.

12.7 Computer, Utility and Telecommunications Equipment

No private telephone systems, utilities and/or other related computer, utility or telecommunications equipment or lines may be installed without Landlord's prior written consent, which consent shall not be unreasonably withheld. If Landlord gives such consent, all equipment must be installed within the Premises and, unless Landlord, at the time of installation, notifies Tenant in writing that removal will be required, left in the Premises and surrendered to Landlord upon the expiration or sooner termination of this Lease.

12.8 Notice and Opportunity to Post Notice of Nonresponsibility

Tenant agrees not to proceed to make any Alterations, notwithstanding consent from Landlord to do so, without fifteen (15) days' prior written notice to Landlord, in order that Landlord may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Tenant's improvements. Tenant will at all times permit such notices to be posted and to remain posted until the completion of work.

13. MAINTENANCE AND REPAIRS OF PREMISES

13.1 Maintenance by Tenant

Subject to the provisions of Paragraph 13.2, 21 and 22 below, throughout the Term, Tenant shall, at its sole expense, (1) keep and maintain in good order and condition the Building and the Premises and repair the Building and the Premises and every part thereof, including interior and exterior glass, windows, window frames and casements, interior and exterior doors and door frames and door closers; interior and exterior lighting (including, without limitation, light bulbs and ballasts), the roof covering; the Systems serving the Premises and the Building; interior and exterior signage, interior demising walls and partitions, equipment, interior painting and interior walls and floors, and the roll-up doors, ramps and dock equipment, including, without limitation,

dock bumpers, dock plates, dock seals, dock levelers and dock lights located in or on the Premises (excepting only those portions of the Building or the Project to be maintained by Landlord, as provided in Paragraph 13.2 below), (2) furnish all expendables, including light bulbs, paper goods and soaps, used in the Premises, and (3) keep and maintain in good order and condition and repair and replace all of Tenant's security systems in or about or serving the Premises. Tenant shall not do nor shall Tenant allow Tenant's Agents to do anything to cause any damage, deterioration or unsightliness to the Premises, the Building or the Project. Tenant shall perform its obligations under this Paragraph 13.1 in accordance with maintenance and repair standards adopted by Landlord from time to time for the Project. Tenant shall cause to be furnished to Landlord on not less than a quarterly basis maintenance reports on all Systems and the roof of the Building prepared by a qualified vendor or consultant, and Tenant shall promptly perform any maintenance tasks recommended by such reports or otherwise required by Landlord to cause the Premises and the Systems to comply with Landlord's maintenance and repair standards.

13.2 Maintenance by Landlord

Subject to the provisions of Paragraphs 13.1, 21 and 22, and further subject to Tenant's obligation under Paragraph 4 to reimburse Landlord, in the form of Additional Rent, for Tenant's Proportionate Share(s) of the Project and the Building, as applicable, of the cost and expense of the following items, Landlord agrees to repair and maintain the Common Areas in good order and condition, including, without limitation, the Parking Areas, pavement, landscaping, sprinkler systems, sidewalks, driveways, curbs, and lighting systems in the Common Areas. Subject to the provisions of Paragraphs 13.1, 21 and 22, Landlord, at its own cost and expense, agrees to repair and maintain the following item: the structural portions of the roof (specifically excluding the roof coverings), the foundation, the footings, the floor slab, and the load bearing walls and exterior walls of the Building (excluding any glass and any routine maintenance, including, without limitation, any painting, sealing, patching and waterproofing of such walls).

13.3 Landlord's Right to Perform Tenant's Obligations

Notwithstanding anything in this Paragraph 13 to the contrary, Landlord shall have the right to either repair or to require Tenant to repair any damage to any portion of the Premises, the Building and/or the Project caused by or created due to any act, omission, negligence or willful misconduct of Tenant or Tenant's Agents and to restore the Premises, the Building and/or the Project, as applicable, to the condition existing prior to the occurrence of such damage; provided, however, that in the event Landlord elects to perform such repair and restoration work, Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in connection therewith. Landlord's obligation hereunder to repair and maintain is subject to the condition precedent that Landlord shall have received written notice of the need for such repairs and maintenance and a reasonable time to perform such repair and maintenance. Tenant shall promptly report in writing to Landlord any defective condition which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for the costs and expenses of repairing any Preventable Damage occurring after the date Tenant obtains actual knowledge of such defective condition and any liability incurred by Landlord by reason of Tenant's failure to notify Landlord of such defective condition in a timely manner as provided herein. As used herein, "**Preventable Damage**" means any damage or deterioration which could

have been prevented had Landlord received timely notice of the defective condition. Nothing contained herein shall be deemed or construed to limit Tenant's obligations under Paragraph 16 below.

13.4 Tenant's Waiver of Rights

Tenant hereby expressly waives all rights to make repairs at the expense of Landlord or to terminate this Lease, as provided for in California Civil Code Sections 1941 and 1942, and 1932(1), respectively, and any similar or successor statute or law in effect or any amendment thereof during the Term.

14. LANDLORD'S INSURANCE

At all times during the Term of this Lease, Landlord shall purchase and keep in force "all risk" property insurance covering the Base Building Improvements, the Tenant Improvements and all Alterations made to the Premises by Tenant in accordance with the terms of Paragraph 12 above, in accordance with Landlord's customary insurance program for comparable properties. Tenant shall provide Landlord with such information as may be requested by Landlord or its insurers concerning the value of the Tenant Improvements or any Alterations. Tenant acknowledges and agrees that Landlord shall have no obligation to maintain property insurance covering any alterations, additions or improvements made to the Premises other than Alterations made in strict accordance with Paragraph 12 (such other alterations, additions or improvements being herein referred to as "**Unpermitted Alterations**"), and Tenant hereby agrees to indemnify and hold harmless Landlord and Landlord's Agents from and against any and all Losses (as hereinafter defined) resulting from or arising out of the making of any such Unpermitted Alterations. Tenant shall, at its sole cost and expense, comply with any and all reasonable requirements pertaining to the Premises, the Building and the Project of any insurer necessary for the maintenance of reasonable property damage and commercial general liability insurance, covering the Building and the Project. Landlord, at Tenant's cost, may maintain "Loss of Rents" insurance, insuring that the Rent will be paid in a timely manner to Landlord for a period of at least twelve (12) months if the Building or any portion thereof are destroyed or rendered unusable or inaccessible by any cause insured against under this Lease.

15. TENANT'S INSURANCE

15.1 Commercial General Liability Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, secure and keep in force a Commercial General Liability insurance policy covering the Premises, insuring Tenant, and naming Landlord and its lenders as additional insureds, against liability arising out of the ownership, use, occupancy or maintenance of the Premises. The minimum limit of coverage of such policy shall be in the amount of not less than Three Million Dollars ($3,000,000.00) for each occurrence combined single limit for bodily injury and property damage, shall include contractual liability coverage (which shall include coverage for Tenant's indemnification obligations in this Lease, provided that the amount of such coverage shall not be construed to limit Tenant's indemnification obligations hereunder), and shall contain severability of interests and cross liability coverage clauses and/or endorsements. Such insurance shall be

endorsed to be primary and non-contributory to any insurance Landlord may carry. Landlord may from time to time require reasonable increases in any such limits if Landlord believes that additional coverage is necessary or desirable. The limit of any insurance shall not limit the liability of Tenant hereunder. No policy maintained by Tenant under this Paragraph 15.1 shall contain a deductible greater than Five Thousand Dollars ($5,000.00). Such policies of insurance shall be issued as primary policies and not contributing with or in excess of coverage that Landlord may carry.

15.2 Property Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, maintain in full force and effect special form property insurance on all of its personal property, possessions, furniture, furnishings, trade or business fixtures, equipment and such other items listed on ***Exhibit F*** (collectively, "**Tenant's Property**") located on the Premises. Such special form property insurance shall be on a full replacement cost basis and shall be written to cover all risks of direct loss or damage, including, but not be limited to, theft, water damage and sprinkler leakage. No such policy shall contain a deductible greater than Five Thousand Dollars ($5,000.00). During the Term of this Lease the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of Tenant's Property. Landlord shall have no interest in the insurance upon Tenant's Property and will sign all documents reasonably necessary in connection with the settlement of any claim or loss by Tenant. Landlord will not carry insurance on Tenant's Property.

15.3 Worker's Compensation Insurance; Employer's Liability Insurance

At all times during the Term of this Lease, Tenant shall, at Tenant's expense, maintain in full force and effect worker's compensation insurance with not less than the minimum limits required by Law, and employer's liability insurance with a minimum limit of coverage of One Million Dollars ($1,000,000) per accident.

15.4 Business Interruption Insurance

Tenant shall, at all times during the Term of this Lease, maintain in full force and effect loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings or extra expenses attributable to or resulting from all perils commonly insured under a special form policy of property insurance.

15.5 Insurance Standards and Evidence of Coverage

All insurance required to be carried by Tenant hereunder shall be maintained with insurance companies authorized to do business in the State of California for the issuance of the applicable type of insurance coverage and rated A:XIII or better in Best's Key Rating Guide. Notwithstanding the foregoing, Landlord hereby approves General Star Indemnity as the carrier of the insurance required under Paragraph 15.1 above, provided that General Star Indemnity shall at all times during the Term maintain a Best's Key Rating of not less than A++:VIII. Tenant shall deliver to Landlord certificates of insurance and true and complete copies of any and all endorsements required herein for all insurance required to be maintained by Tenant hereunder at the time of execution of this Lease by Tenant. Tenant shall at least thirty (30) days

prior to expiration of each policy, furnish Landlord and the other parties named as additional insureds with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable except after thirty (30) days' prior written notice to Landlord and the other parties named as additional insureds as required in this Lease (except for cancellation for nonpayment of premium, in which event cancellation shall not take effect until at least ten (10) days' notice has been given to Landlord and the parties named as additional insureds hereunder).

16. INDEMNIFICATION

16.1 Of Landlord

Tenant shall indemnify and hold harmless Landlord and Landlord's advisors, employees, partners, shareholders and directors against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") arising from (1) the use of the Premises, the Building or the Project by Tenant or Tenant's Agents, or from any activity done, permitted or suffered by Tenant or Tenant's Agents in or about the Premises, the Building or the Project, and (2) any act, neglect, fault, willful misconduct or omission of Tenant or Tenant's Agents, or from any breach or default in the terms of this Lease by Tenant or Tenant's Agents, and (3) any action or proceeding brought on account of any matter in items (1) or (2); provided, however, that in no event shall Tenant be required to indemnify Landlord against any claims, demands or losses resulting from any failure of Landlord to observe any of the terms and conditions of this Lease, including, without limitation, the covenant set forth in Paragraph 9.2(a) above, in each case to the extent such failure or breach has persisted for an unreasonable period of time after written notice of such failure or breach. If any action or proceeding is brought against Landlord by reason of any such claim, upon notice from Landlord, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby releases Landlord and Landlord's Agents from responsibility for, waives its entire claim of recovery for and assumes all risk of (i) damage to property or injury to persons in or about the Premises, the Building or the Project from any cause whatsoever (except that which is caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents or by the failure of Landlord to observe any of the terms and conditions of this Lease, if such failure has persisted for an unreasonable period of time after written notice of such failure), or (ii) loss resulting from business interruption or loss of income at the Premises. The obligations of Tenant under this Paragraph 16.1 shall survive the expiration or earlier termination of this Lease.

16.2 Of Tenant

Landlord shall indemnify and hold harmless Tenant and Tenant's employees, partners, sharehorders and directors against and from any and all Losses relating to the Project and arising from (1) the gross negligence or willful misconduct of Landlord or Landlord's Agents, (2) the failure of Landlord to observe any of the terms and conditions of this Lease, if such failure has persisted for an unreasonable period of time after written notice of such failure, and (3) any action or proceeding brought on account of any matter in items (1) or (2). If any action or proceeding is brought against Tenant by reason of any such claim, upon notice from Tenant,

Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Landlord. The obligations of Landlord under this Paragraph 16.2 shall survive any termination of this Lease.

16.3 No Impairment of Insurance

The foregoing indemnity shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this Lease, to the extent that such policies cover the peril or occurrence that results in the claim that is subject to the foregoing indemnity.

17. SUBROGATION

Landlord and Tenant hereby mutually waive any claim against the other and its Agents for any loss or damage to any of their property located on or about the Premises, the Building or the Project that is caused by or results from perils covered by the property insurance required to be carried by the respective parties in accordance with Paragraphs 14 and 15 of this Lease, whether or not due to the negligence of the other party or its Agents. Because the foregoing waivers will preclude the assignment of any claim by way of subrogation to an insurance company or any other person, each party now agrees to immediately give to its insurer written notice of the terms of these mutual waivers and shall have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers. Nothing in this Paragraph 17 shall relieve a party of liability to the other for failure to carry insurance required by this Lease.

18. SIGNS

Tenant shall not place or permit to be placed in, upon, or about the Premises, the Building or the Project any exterior lights, decorations, balloons, flags, pennants, banners, advertisements or notices, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent or without complying with Landlord's signage program, as the same may be modified by Landlord from time to time, and with all applicable Laws, and will not conduct, or permit to be conducted, any sale by auction on the Premises or otherwise on the Project. Tenant shall remove any sign, advertisement or notice placed on the Premises, the Building or the Project by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises, the Building or the Project caused thereby, all at Tenant's expense. If any signs are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs and repair any damage or injury to the Premises, the Building or the Project at Tenant's sole cost and expense.

19. FREE FROM LIENS

Tenant shall keep the Premises, the Building and the Project free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant in accordance with the provisions of this Paragraph 19. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have in addition to all other remedies provided herein and by law the right but not the obligation to cause same to be released by such means as it shall

deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Landlord shall deem proper for the protection of Landlord, the Premises, the Building and the Project, from mechanics' and materialmen's liens. Tenant agrees not to proceed to perform any repairs or construction on the Premises without fifteen (15) days' prior written notice to Landlord in order that Landlord may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Tenant's work.

20. ENTRY BY LANDLORD

Tenant shall permit Landlord and Landlord's Agents to enter into and upon the Premises at all reasonable times upon twenty-four (24) hours' notice (except in the case of an emergency, in which event no advance notice shall be required) for the purpose of inspecting the same or showing the Premises to prospective purchasers, lenders or tenants or to alter, improve, maintain and repair the Premises or the Building as required or permitted of Landlord under the terms hereof, or for any other reasonable business purpose, without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; and Tenant shall permit Landlord to post notices of non-responsibility and ordinary "for sale" or "for lease" signs. Notwithstanding the foregoing, Landlord shall only enter the Premises for the purpose of showing the same to prospective tenants during the last ten (10) months of the Term. No such entry shall be construed to be a forcible or unlawful entry into, or a detailer of, the Premises, or an eviction of Tenant from the Premises. Tenant's representatives shall have the right to accompany Landlord on any inspection of the Premises, provided that Tenant's representatives are available at the time of such inspections. Landlord may temporarily close entrances, doors, corridors, elevators or other facilities without liability to Tenant by reason of such closure in the case of an emergency and when Landlord otherwise reasonably deems such closure necessary.

21. DESTRUCTION AND DAMAGE

21.1 Damage Covered by Extended Coverage Insurance

If the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord shall, at Landlord's option:

21.1.1 Material Damage; Insured Loss

In the event of material damage to the Premises (which shall mean damage or destruction of a nature such that all required permits cannot be reasonably obtained and/or the Premises can not be substantially repaired and restored to the condition existing immediately prior to such damage or destruction within three hundred sixty-five (365) days after the date Landlord obtains actual knowledge of such destruction (the "**Casualty Discovery Date**")), Landlord may elect either to commence promptly to repair and restore the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or not to repair or restore the Premises, in which event this Lease shall terminate. Landlord shall give Tenant

written notice of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects in writing not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

21.1.2 Minor Damage; Insured Loss

In the event of minor damage to the Premises (which shall mean damage or destruction of a nature such that all required permits can be reasonably obtained and the Premises may be substantially repaired or restored to the condition existing immediately prior to such damage or destruction within three hundred sixty-five (365) days after the Casualty Discovery Date) for which Landlord will receive insurance proceeds sufficient to cover the cost to repair and restore such partial destruction, Landlord shall commence and proceed diligently with the work of repair and restoration, in which event this Lease shall continue in full force and effect. If the insurance proceeds (plus any amounts Tenant may elect or is obligated to contribute) are not sufficient to cover the cost of such repair and restoration, Landlord may elect either to so repair and restore, in which event this Lease shall continue in full force and effect, or not to repair or restore, in which event this Lease shall terminate. In either case, Landlord shall give written notice to Tenant of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects, in writing, not to restore the Premises, this Lease shall be deemed to have terminated as of the date of such partial destruction.

21.1.3 Calculation of Restoration Period

Following the occurrence of any casualty event, Landlord shall obtain from a licensed general contractor selected by Landlord (the "**Restoration Contractor**") an estimate of the time required to obtain all permits and to fully repair and restore the Premises. In the event the Restoration Contractor determines that the work of repair and restoration shall require more than three hundred sixty-five (365) days to complete, Tenant shall have the right to discuss such timing with the Restoration Contractor and, with the approval of Landlord, to discuss modifications to the scope of work in an effort to reduce the repair and restoration time to a period of less than three hundred sixty-five days; provided, however, that in the event of any disagreement between the parties as to the estimated length of the restoration period or the scope of work required, the determination of Landlord and the Restoration Contractor shall control.

21.2 Uninsured Loss

If the Premises are damaged by any peril not covered by Landlord's property insurance, and the cost to repair such damage exceeds any amount Tenant may agree to contribute, Landlord may elect either to commence promptly to repair and restore the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or not to repair or restore the Premises, in which event this Lease shall terminate. Landlord shall give Tenant written notice of its intention within sixty (60) days after the Casualty Discovery Date. If Landlord elects, in writing, not to restore the Premises, this Lease shall be deemed to have terminated as of the date on which Tenant surrenders possession of the Premises to Landlord.

21.3 Casualty During Last Twelve Months of Term

If fifty percent (50%) or more of the Building is damaged or destroyed during the last twelve (12) months of the Term (unless Tenant has remaining extension options and has previously validly exercised such options or validly exercises such options within ten (10) days after the Casualty Discovery Date), Landlord shall have the option to terminate this Lease, exercisable by notice to Tenant within sixty (60) days after the Casualty Discovery Date.

21.4 Tenant's Right to Terminate Lease

If the Premises is damaged or destroyed to the extent that the Premises cannot be substantially repaired or restored by Landlord within three hundred sixty-five (365) days after the Casualty Discovery Date, Tenant may terminate this Lease immediately upon notice thereof to Landlord, which notice shall be given, if at all, not later than fifteen (15) days after Landlord notifies Tenant of Landlord's estimate of the period of time required to repair such damage or destruction.

21.5 Rent Abatement

In the event of repair and restoration as herein provided, the monthly installments of Base Rent and Additional Rent shall be abated proportionately to the extent Tenant's use of the Premises is impaired during the period of such repair or restoration, but only to the extent of rental abatement insurance proceeds actually received by Landlord. The number of parking spaces allocated to Tenant hereunder shall be reduced on a proportionate basis in the event any of the parking spaces in the Parking Areas are eliminated as a result of such damage or destruction affecting such Parking Areas. Except as expressly provided above with respect to abatement of Base Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord and Landlord's Agents from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any damage to or destruction of the Premises, the Building or the Project or the repair or restoration thereof, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Premises, the Building or the Project and/or any inconvenience or annoyance occasioned by such damage, repair or restoration.

21.6 Restoration of Base Building Improvements and Tenant Improvements

If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall repair or restore only the Base Building Improvements constructed pursuant to the terms of this Lease, substantially to their condition existing immediately prior to the occurrence of the damage or destruction; and Tenant shall promptly repair and restore, at Tenant's expense, the Tenant Improvements and Tenant's Alterations. Landlord shall make available to Tenant to pay Restoration Costs (as hereinafter defined) any insurance proceeds actually collected by Landlord allocable to the Tenant Improvements and Alterations. Such proceeds shall be disbursed by Landlord in accordance with customary construction-lending practices and disbursement procedures (including, without limitation, the creation of a retention). As used herein, "**Restoration Costs**" means costs actually incurred by Tenant in repairing and restoring the Tenant Improvements and any Alterations made by Tenant to the Premises.

21.7 Waiver

Tenant hereby waives the provisions of California Civil Code Section 1932(2) and Section 1933(4) which permit termination of a lease upon destruction of the leased premises, and the provisions of any similar law now or hereinafter in effect, and the provisions of this Paragraph 21 shall govern exclusively in case of such destruction.

22. CONDEMNATION

(a) If twenty-five percent (25%) or more of the Building or fifty percent (50%) or more of the Designated Parking Areas (as hereinafter defined) is taken for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of appropriation, inverse condemnation, condemnation or eminent domain, or sold to prevent such taking (each such event being referred to as a "**Condemnation**"), Landlord may, at its option, terminate this Lease as of the date title vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Condemnation and any repairs by Landlord would be untenantable for the conduct of Tenant's business operations, Tenant shall have the right to terminate this Lease as of the date title vests in the condemning party. If either party elects to terminate this Lease as provided herein, such election shall be made by written notice to the other party given within thirty (30) days after the nature and extent of such Condemnation have been finally determined. If neither Landlord nor Tenant elects to terminate this Lease to the extent permitted above, Landlord shall promptly proceed to restore the Premises, to the extent of any Condemnation award received by Landlord, to substantially the same condition as existed prior to such Condemnation, allowing for the reasonable effects of such Condemnation, and a proportionate abatement shall be made to the Base Rent and Additional Rent corresponding to the time during which, and to the portion of the floor area of the Premises (adjusted for any increase thereto resulting from any reconstruction) of which, Tenant is deprived on account of such Condemnation and restoration, as reasonably determined by Landlord. Except as expressly provided in the immediately preceding sentence with respect to abatement of Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord and Landlord's Agents from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any Condemnation or the repair or restoration of the Premises, the Building, the Project or the Parking Areas following such Condemnation, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Premises, the Building, the Project or the parking areas and/or any inconvenience or annoyance occasioned by such Condemnation, repair or restoration. The provisions of California Code of Civil Procedure Section 1265.130, which allows either party to petition the Superior Court to terminate the Lease in the event of a partial taking of the Premises, the Building or the Project or the parking areas for the Building or the Project, and any other applicable law now or hereafter enacted, are hereby waived by Tenant.

(b) Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection with any Condemnation, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise; provided, however, that Tenant shall be entitled to receive any award separately allocated by the condemning authority to Tenant for Tenant's relocation

expenses or the value of Tenant's Property (specifically excluding fixtures, Alterations and other components of the Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord), provided that such award does not reduce any award otherwise allocable or payable to Landlord.

23. ASSIGNMENT AND SUBLETTING

23.1 Landlord's Consent Required Except for Permitted Transfers

Except as specifically provided for in Paragraph 23.3 below, Tenant shall not voluntarily or by operation of law, (1) mortgage, pledge, hypothecate or encumber this Lease or any interest herein, (2) assign or transfer this Lease or any interest herein, (3) sublease the Premises or any part thereof, or any right or privilege appurtenant thereto, or (4) allow any other person (the employees and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Tenant is not then in Default under this Lease nor is any event then occurring which with the giving of notice or the passage of time, or both, would constitute a Default hereunder.

23.2 Requirements of Request for Consent

When Tenant requests Landlord's consent to such assignment or subletting, it shall notify Landlord in writing of the name and address of the proposed assignee or subtenant and the nature and character of the business of the proposed assignee or subtenant and shall provide current and prior financial statements for the proposed assignee or subtenant prepared in accordance with generally accepted accounting principles consistently applied ("**GAAP**"). Tenant shall also provide Landlord with a copy of the proposed sublease or assignment agreement, including all material terms and conditions thereof, and such additional information concerning the proposed assignee or subtenant as Landlord may request. Landlord shall have the option, to be exercised within fifteen (15) days of receipt of the foregoing in the case of a proposed assignment or subletting affecting not more than eleven thousand (11,000) square feet of the Premises, and within thirty (30) days of receipt of the foregoing in the case of a proposed assignment or subletting affecting more than eleven thousand (11,000) square feet ("**Landlord's Review Period**"), to (1) consent to the proposed assignment or sublease, (2) refuse its consent to the proposed assignment or sublease, providing that such consent shall not be unreasonably withheld, conditioned or delayed so long as Tenant is not then in Default under this Lease or the-901 Gateway Lease, nor is any event then occurring which with the giving of notice or the passage of time, or both, would constitute a Default hereunder or under the 901 Gateway Lease, or (3) sublease or take an assignment, as the case may be, from Tenant of the interest in this Lease and/or the Premises that Tenant proposes to assign or sublease, on the same terms and conditions as stated in the proposed sublet or assignment agreement. Notwithstanding the foregoing, in the event Tenant wishes to assign or sublet all of the Premises for all of the remainder of the Term (except in either event in connection with a Permitted Transfer), then in addition to the options specified in the aforesaid clauses (1), (2) and (3), Landlord shall have the additional right, to be exercised within the aforesaid thirty (30) day period, to terminate this Lease in its entirety. In the event Landlord elects to terminate this Lease or sublease or take an assignment from Tenant of the interest in this Lease and/or the Premises that Tenant proposes to

assign or sublease as provided in the foregoing clauses of this Paragraph 23.2, then Landlord shall have the additional right to negotiate directly with Tenant's proposed assignee or subtenant and to enter into a direct lease or occupancy agreement with such party on such terms as shall be acceptable to Landlord in its sole and absolute discretion, and Tenant hereby waives any claims against Landlord related thereto, including, without limitation, any claims for any compensation or profit related to such lease or occupancy agreement.

23.3 Criteria To Be Considered in Connection with Request for Consent

Without otherwise limiting the criteria upon which Landlord may withhold its consent to a proposed assignment or sublease, Landlord shall be entitled to consider all reasonable criteria including, but not limited to, the following: (1) whether or not the proposed subtenant or assignee is engaged in a business which, and the Premises will be used in a manner which, is in keeping with the then character and nature of all other tenancies in the Project, (2) whether the use to be made of the Premises by the proposed subtenant or assignee will conflict with any so-called "exclusive" use then in favor of any other tenant of the Building, the Project, or the Adjacent Properties, and whether such use would be prohibited by any other portion of this Lease, including, but not limited to, any rules and regulations then in effect, or under applicable Laws, and whether such use imposes an unreasonable load upon the Premises and the Building and Project services, (3) the business reputation of the proposed individuals who will be managing and operating the business operations of the assignee or subtenant, and the long-term financial and competitive business prospects of the proposed assignee or subtenant, and (4) the creditworthiness and financial stability of the proposed assignee or subtenant in light of the responsibilities involved. In any event, Landlord may withhold its consent to any assignment or sublease if the actual use proposed to be conducted in the Premises or portion thereof is not a Permitted Use provided for under Paragraph 9 above or a general office use.

23.4 Permitted Transfers

Notwithstanding the foregoing, Tenant may, without Landlord's consent, but upon notice and delivery of evidence documenting such assignment or subletting, assign or sublet to an Affiliate (as defined below) of the original Tenant (such assignment or subletting being referred to as a "**Permitted Transfer**"). In addition, a sale or transfer of the capital stock of Tenant shall be deemed a Permitted Transfer if (1) such sale or transfer occurs in connection with any bona fide financing or capitalization for the benefit of Tenant or (2) occurring through a public trade. For purposes of this Lease, "**Affiliate**" shall mean, as to any Person, any person, firm or corporation (i) which shall be controlled by, under the control of, or under common control with such person, (ii) which results from a merger of, reorganization of, or consolidation with, or (iii) which acquires substantially all of the stock or assets with respect to the business that is conducted in the Premises. "**Person**" means any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in any individual, fiduciary or other capacity. For purposes hereof, "**control**" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, firm or corporation, whether through the ownership of voting securities, by contract or otherwise.

23.5 Excess Rent

If Landlord approves an assignment or subletting as herein provided, Tenant shall pay to Landlord, as Additional Rent, fifty percent (50%) of the Transfer Profits (as hereinafter defined), as evidenced by written records satisfactory to Landlord. As used herein, "Transfer Profits" means the difference, if any, between (1) the Base Rent plus Additional Rent allocable to that part of the Premises affected by such assignment or sublease pursuant to the provisions of this Lease, and (2) the rent and any additional rent payable by the assignee or sublessee to Tenant, less actual leasing commissions and reasonable attorneys' fees, if any, incurred by Tenant in connection with such assignment or sublease, and actual tenant improvement costs paid by Tenant in improving the Premises for the applicable assignee or subtenant up to an aggregate of five dollars ($5.00) per square foot of space subject to the assignment or sublease transaction. The assignment or sublease agreement, as the case may be, after approval by Landlord, shall not be amended without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, shall contain an express assumption by the assignee or subtenant of Tenant's obligations under this Lease and shall contain a provision directing the assignee or subtenant to pay the rent and other sums due thereunder directly to Landlord upon receiving written notice from Landlord that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from the assignee or subtenant, then Tenant shall hold such sums in trust for the benefit of Landlord and shall immediately forward the same to Landlord. Landlord's collection of such rent and other sums shall not constitute an acceptance by Landlord of attornment by such assignee or subtenant. A consent to one assignment, subletting, occupation or use shall not be deemed to be a consent to any other or subsequent assignment, subletting, occupation or use, and consent to any assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any assignment or subletting without Landlord's consent shall be void, and shall, at the option of Landlord, constitute a Default under this Lease.

23.6 No Release of Tenant

Notwithstanding any assignment or subletting, including, without limitation, a Permitted Transfer, Tenant shall at all times remain fully responsible and liable for the payment of the Rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignment or subletting).

23.7 Payment of Landlord's Fees

Tenant shall pay Landlord's reasonable fees (including, without limitation, the fees of Landlord's counsel, not to exceed $1,000.00 per transaction), incurred in connection with Landlord's review and processing of documents regarding any proposed assignment or sublease.

23.8 No Consent to Further Assignment

Notwithstanding anything in this Lease to the contrary, in the event Landlord consents to an assignment or subletting by Tenant in accordance with the terms of this Paragraph 23 (specifically excluding any Permitted Transfer), Tenant's assignee or subtenant shall have no

right to further assign this Lease or any interest therein or thereunder or to further sublease all or any portion of the Premises.

23.9 Constraints Reasonable

Tenant acknowledges and agrees that the restrictions, conditions and limitations imposed by this Paragraph 23 on Tenant's ability to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Premises, or to allow any other person to occupy or use the Premises or any portion thereof, are, for the purposes of California Civil Code Section 1951.4, as amended from time to time, and for all other purposes, reasonable at the time that the Lease was entered into, and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to sublet the Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Premises, or to allow any other person to occupy or use the Premises or any portion thereof.

24. TENANT'S DEFAULT

The occurrence of any one of the following events shall constitute an event of default on the part of Tenant ('**Default**"):

(a) The vacation of the Premises for a consecutive period of sixty (60) days or more, without (i) the intention of retaking possession or occupancy, and (ii) providing for the security of the Building, or the abandonment of the Premises by Tenant or any other vacation which would cause any insurance policy to be invalidated or otherwise lapse;

(b) Failure to pay any installment of Rent or any other monies due and payable hereunder within five (5) days after the date the same are due;

(c) A general assignment by Tenant for the benefit of creditors;

(d) The filing of a voluntary petition in bankruptcy by Tenant, the filing by Tenant of a voluntary petition for an arrangement, the filing by or against Tenant of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by the creditors of Tenant, said involuntary petition remaining undischarged for a period of sixty (60) days;

(e) Receivership, attachment, or other judicial seizure of substantially all of Tenant's assets on the Premises, such attachment or other seizure remaining undismissed or undischarged for a period of sixty (60) days after the levy thereof;

(f) Death or disability of Tenant, if Tenant is a natural person, or the failure by Tenant to maintain its legal existence, if Tenant is a corporation, partnership, limited liability company, trust or other legal entity;

(g) Failure of Tenant to execute and deliver to Landlord any estoppel certificate, subordination agreement, or lease amendment in the time periods and manner required by Paragraphs 30 or 31 or 42;

(h) An assignment or sublease, or attempted assignment or sublease, of this Lease or the Premises by Tenant contrary to the provisions of Paragraph 23, unless such assignment or sublease is expressly conditioned upon Tenant having received Landlord's consent thereto;

(i) Failure of Tenant to deposit the Letter of Credit with Landlord when required under Paragraph 7, and/or failure of Tenant to restore the Letter of Credit to the amount and within the time period provided in Paragraph 7;

(j) Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in any other subparagraphs of this Paragraph 24, which shall be governed by such other subparagraphs), which failure continues for thirty (30) days after written notice thereof from Landlord to Tenant, provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such thirty (30) day period despite reasonable diligence, Tenant shall not be in default under this subparagraph so long as Tenant thereafter diligently and continuously prosecutes the cure to completion;

(k) Chronic delinquency by Tenant in the payment of Rent, or any other periodic payments required to be paid by Tenant under this Lease. "**Chronic delinquency**" shall mean failure by Tenant to pay Rent, or any other periodic payments required to be paid by Tenant under this Lease, when due (i) for any three (3) months (consecutive or nonconsecutive) during any period of twelve (12) months or (ii) for any twelve (12) months (consecutive or nonconsecutive) during the Term. In the event of a Chronic Delinquency, in addition to Landlord's other remedies for Default provided in this Lease, at Landlord's option, Landlord shall have the right to require that Rent be paid by Tenant quarterly, in advance;

(l) Chronic overuse by Tenant or Tenant's Agents of the number of undesignated parking spaces set forth in the Basic Lease Information. "**Chronic overuse**" shall mean use by Tenant or Tenant's Agents of a number of parking spaces greater than the number of parking spaces set forth in the Basic Lease Information more than three (3) times during any twelve (12) month period;

(m) Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and shall not have been replaced with substitute insurance satisfying the requirements of this Lease within five (5) business days of Tenant's receipt of notice of such termination, reduction or change;

(n) Any failure by Tenant to discharge any lien or encumbrance placed on the Project or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Project or any part thereof; and

(o) Any Default (as defined in the 901 Gateway Lease) under the terms of the 901 Gateway Lease.

Tenant agrees that any notice given by Landlord pursuant to Paragraph 24(j) above shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and

Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

25. LANDLORD'S REMEDIES

25.1 Termination

In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall elect to so terminate this Lease then Landlord may recover from Tenant:

(1) the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; plus

(2) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of award of the amount by which the unpaid Rent and any other sums due and payable for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would be likely to result therefrom, including, without limitation, (A) any costs or expenses incurred by Landlord (1) in retaking possession of the Premises; (2) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering, remodeling or rehabilitating the Premises or any affected portions of the Building or the Project, including such, actions undertaken in connection with the reletting or attempted reletting of the Premises to a new tenant or tenants; (3) for leasing commissions, advertising costs and other expenses of reletting the Premises; or (4) in carrying the Premises, including taxes, insurance premiums, utilities and security precautions; (B) any unearned brokerage commissions paid in connection with Tenant's lease of the Premises; (C) reimbursement of any previously waived or abated Base Rent or Additional Rent or any free rent or reduced rental rate granted hereunder; and (D) any concession made or paid by Landlord to the benefit of Tenant in consideration of this Lease including, but not limited to, any moving allowances, contributions, payments or loans by Landlord for tenant improvements or build-out allowances (including, without limitation, any unamortized portion of the Tenant Improvement Allowance (such Tenant Improvement Allowance to be amortized over the Term in the manner reasonably determined by Landlord), if any), and any outstanding portion of the Deferred Allowance (including, without limitation, accrued interest thereon), if any, or assumptions by Landlord of any of Tenant's previous lease obligations; plus

(5) such reasonable attorneys' fees incurred by Landlord as a result of a Default, and costs in the event suit is filed by Landlord to enforce such remedy; and plus

(6) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subparagraphs (1) and (2) above, the "**worth at the time of award**" is computed by allowing interest at an annual rate equal to twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. As used in subparagraph (3) above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any Default of Tenant hereunder.

25.2 Continuation of Lease

In the event of any Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity and under this Lease, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, provided that Tenant has the right to sublet or assign, subject only to reasonable limitations). In addition, Landlord shall not be liable in any way whatsoever for its failure or refusal to relet the Premises; provided, however, that the foregoing provision shall not be deemed to relieve Landlord of any duty under applicable law to mitigate Tenant's damages in the event Landlord elects to seek damages for Tenant's breach or default. For purposes of this Paragraph 25.2, the following acts by Landlord will not constitute the termination of Tenant's right to possession of the Premises:

(1) Acts of maintenance or preservation or efforts to relet the Premises, including, but not limited to, alterations, remodeling, redecorating, repairs, replacements and/or painting as Landlord shall consider advisable for the purpose of reletting the Premises or any part thereof; or

(2) The appointment of a receiver upon the initiative of Landlord to protect Landlord's interest under this Lease or in the Premises.

25.3 Re-entry

In the event of any Default by Tenant, Landlord shall also have the right, with or without terminating this Lease, in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

25.4 Reletting

In the event of the abandonment of the Premises by Tenant or in the event that Landlord shall elect to re-enter as provided in Paragraph 25.3 or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided in Paragraph 25.1, Landlord may from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises in

Landlord's sole discretion. In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied in the following order: (1) to reasonable attorneys' fees incurred by Landlord as a result of a Default and costs in the event suit is filed by Landlord to enforce such remedies; (2) to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; (3) to the payment of any costs of such reletting; (4) to the payment of the costs of any alterations and repairs to the Premises; (5) to the payment of Rent due and unpaid hereunder; and (6) the residue, if any, shall be held by Landlord and applied in payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

25.5 Termination

No re-entry or taking of possession of the Premises by Landlord pursuant to this Paragraph 25 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of any Default by Tenant, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

25.6 Cumulative Remedies

The remedies herein provided are not exclusive and Landlord shall have any and all other remedies provided herein or by law or in equity.

25.7 No Surrender

No act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be or constitute an acceptance of the surrender of the Premises by Tenant prior to the expiration of the Term, and such acceptance by Landlord of surrender by Tenant shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by Landlord. The surrender of this Lease by Tenant,voluntarily or otherwise, shall not work a merger unless Landlord elects in writing that such merger take place, but shall operate as an assignment to Landlord of any and all existing subleases, or Landlord may, at its option, elect in writing to treat such surrender as a merger terminating Tenant's estate under this Lease, and thereupon Landlord may terminate any or all such subleases by notifying the sublessee of its election so to do within five (5) days after such surrender.

26. LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS

26.1 Landlord's Right to Perform

Without limiting the rights and remedies of Landlord contained in Paragraph 25 above, if Tenant shall be in Default in the performance of any of the terms, provisions, covenants or conditions to be performed or complied with by Tenant pursuant to this Lease, then Landlord may at Landlord's option, without any obligation to do so, and without further notice to Tenant perform any such term, provision, covenant, or condition, or make any such payment and Landlord by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Tenant or anyone holding under or through Tenant or any of Tenant's Agents, unless caused by Landlord's gross negligence or willful misconduct.

26.2 In Emergencies

Without limiting the rights of Landlord under Paragraph 25 above, Landlord shall have the right at Landlord's option, without any obligation to do so, to perform any of Tenant's covenants or obligations under this Lease without notice to Tenant in the case of an emergency, as determined by Landlord in its good faith and absolute judgment, or if Landlord otherwise determines in its reasonable discretion that such performance is necessary or desirable for the preservation of the rights and interests or safety of other tenants of the Building or the Project.

26.3 Tenant's Obligation to Reimburse Landlord

If Landlord performs any of Tenant's obligations hereunder in accordance with this Paragraph 26, the full amount of the cost and expense incurred or the payment so made or the amount of the loss so sustained shall immediately be owing by Tenant to Landlord, and Tenant shall promptly pay to Landlord upon demand, as Additional Rent, the full amount thereof with interest thereon from the date of payment by Landlord at the lower of (1) twelve percent (12%) per annum, or (2) the highest rate permitted by applicable law.

27. ATTORNEYS' FEES

27.1 Prevailing Party Entitled to Fees

If either party hereto fails to perform any of its obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

27.2 Costs of Collection

Without limiting the generality of Paragraph 27.1 above, if Landlord utilizes the services of an attorney for the purpose of collecting any Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant, Tenant agrees to pay Landlord reasonable attorneys' fees as determined by Landlord for such services, regardless of the fact that no legal action may be commenced or filed by Landlord.

28. TAXES

Tenant shall be liable for and shall pay, prior to delinquency, all taxes levied against Tenant's Property. If any Alteration or Tenant Improvement installed by Tenant pursuant to Paragraph 12 or any of Tenant's Property is assessed and taxed with the Project or Building, Tenant shall pay such taxes to Landlord, in an amount reasonably determined by Landlord if such taxes are not separately stated in the applicable tax bill, within ten (10) days after delivery to Tenant of a statement therefor.

29. EFFECT OF CONVEYANCE

The term "**Landlord**" as used in this Lease means, from time to time, the then current owner of the Building or the Project containing the Premises, so that, in the event of any sale of the Building or the Project, Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord arising hereunder from and after the date of such transfer, and it shall be deemed and construed, without further agreement between the parties and the purchaser at any such sale, that the purchaser of the Building or the Project has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

30. TENANT'S ESTOPPEL CERTIFICATE

From time to time, upon written request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord or its designee, a written certificate stating (a) the date this Lease was executed, the Commencement Date of the Term and the date the Term expires; (b) the date Tenant entered into occupancy of the Premises; (c) the amount of Rent and the date to which such Rent has been paid; (d) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (or, if assigned, modified, supplemented or amended, specifying the date and terms of any agreement so affecting this Lease); (e) that this Lease represents the entire agreement between the parties with respect to Tenant's right to use and occupy the Premises (or specifying such other agreements, if any); (f) that all obligations under this Lease to be performed by Landlord as of the date of such certificate have been satisfied (or specifying those as to which Tenant claims that Landlord has yet to perform); (g) that all required contributions by Landlord to Tenant on account of Tenant's improvements have been received (or stating exceptions thereto); (h) that on such date there exist no defenses or offsets that Tenant has against the enforcement of this Lease by Landlord (or stating exceptions thereto); (i) that no Rent or other sum payable by Tenant hereunder has been paid more than one (1) month in advance (or stating exceptions thereto); (j) that a currently valid Letter of Credit has been deposited with Landlord, stating the original amount thereof and any increases or decreases thereto; and (k) any other matters evidencing the status of this Lease that may be

required either by a lender making a loan to Landlord to be secured by a deed of trust covering the Building or the Project or by a purchaser of the Building or the Project. Any such certificate delivered pursuant to this Paragraph 30 may be relied upon by a prospective purchaser of Landlord's interest or a mortgagee of Landlord's interest or assignee of any mortgage upon Landlord's interest in the Premises. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Landlord as herein provided, such failure shall, at Landlord's election, constitute a Default under this Lease, and Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee.

31. SUBORDINATION

Landlord shall have the right to cause this Lease to be and remain subject and subordinate to any and all mortgages, deeds of trust and ground leases, if any ("**Encumbrances**") that are now or may hereafter be executed covering the Premises, or any renewals, modifications, consolidations, replacements or extensions thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, together with interest thereon and subject to all the terms and provisions thereof; provided only, and as an express condition precedent to any such subordination of this Lease to an Encumbrance hereafter executed covering the Premises, that the holder of such Encumbrance ("**Holder**") shall agree to recognize Tenant's rights under this Lease upon the foreclosure or termination, as applicable, of such Encumbrance as long as Tenant shall pay the Rent and observe and perform all the provisions of this Lease to be observed and performed by Tenant. Within ten (10) days after Landlord's written request, Tenant shall execute, acknowledge and deliver any and all reasonable documents required by Landlord or the Holder to effectuate such subordination, provided that, concurrently with the execution of such subordination documents, the Holder shall execute a nondisturbance agreement in favor of Tenant consistent with the terms of this Paragraph 31. If Tenant fails to do so, such failure shall constitute a Default by Tenant under this Lease. Notwithstanding anything to the contrary set forth in this Paragraph 31, Tenant hereby attorns and agrees to attorn to any person or entity purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under such Encumbrance.

32. ENVIRONMENTAL COVENANTS

32.1 Disclosure Certificate

Prior to executing this Lease, Tenant has completed, executed and delivered to Landlord a Hazardous Materials Disclosure Certificate ("**Initial Disclosure Certificate**"), a fully completed copy of which is attached hereto as ***Exhibit E*** and incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial Disclosure Certificate is, to the best of Tenant's knowledge, true and correct and accurately describes the Hazardous Materials which will be treated, used or stored on or about the Premises by Tenant or Tenant's Agents.

32.2 Tenant's Obligation to Update Disclosure Certificate

Tenant shall, on a semi-annual basis, complete, execute and deliver to Landlord an updated Disclosure Certificate (each, an "**Updated Disclosure Certificate**") describing Tenant's then current and proposed future uses of Hazardous Materials on or about the Premises, which Updated Disclosure Certificates shall be in the same format as that which is set forth in ***Exhibit F*** or in such updated format as Landlord may require from time to time. Landlord shall have the right to approve or disapprove such new or additional Hazardous Materials in its sole and absolute discretion. Tenant shall make no use of Hazardous Materials on or about the Premises except as described in the Initial Disclosure Certificate or as otherwise approved by Landlord in writing in accordance with this Paragraph 32.2.

32.3 Definition of Hazardous Materials

As used in this Lease, the term "**Hazardous Materials**" shall mean and include any substance that is or contains (1) any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**") (42 U.S.C. § 9601 *et seq.)* or any regulations promulgated under CERCLA; (2) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("**RCRA**") (42 U.S.C. § 6901 *et seq.)* or any regulations promulgated under RCRA; (3) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("**TSCA**") (15 U.S.C. § 2601 *et seq.)* or any regulations promulgated under TSCA; (4) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (5) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (6) polychlorinated biphenyls; (7) lead and lead-containing materials; or (8) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the Premises or any adjacent area or property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent area or property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws. Landlord hereby notifies Tenant in accordance with California Health & Safety Code Section 25359.7 that in 1981-82, the Project was the subject of a state-supervised cleanup of hazardous waste disposed of on the site by prior occupants. As part of the cleanup approved by the applicable agencies, some soils containing heavy metals were left in place, covered by clean fill. These soils are managed in accordance with the requirements of the applicable agencies and a Declaration of Covenants, Conditions and Restrictions imposed by Homart Development Co.

32.4 Definition of Environmental Laws

As used in this Lease, the term "**Environmental Laws**" shall mean and include (1) CERCLA, RCRA and TSCA; and (2) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (A) pollution, (B) the protection or regulation of human health, natural resources or the environment, (C) the treatment, storage or disposal of Hazardous Materials, or (D) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

32.5 Tenant's Use of Hazardous Materials

Tenant agrees that during its use and occupancy of the Premises it will (1) not (A) introduce any Hazardous Materials on or about the Premises except in a manner and quantity necessary for the ordinary performance of Tenant's business or (B) release, discharge or dispose of any Hazardous Materials on, in, at, under, or emanating from, the Premises, the Building or the Project; (2) comply with all Environmental Laws relating to Tenant's use of Hazardous Materials in, on or about the Premises and not engage in or permit Tenant's Agents to engage in any activity in, on or about the Premises in violation of any Environmental Laws; and (3) immediately notify Landlord of (A) any inquiry, test, investigation or enforcement proceeding by any governmental agency or authority against Tenant, Landlord or the Premises, Building or Project relating to any Hazardous Materials or under any Environmental Laws or (B) the occurrence of any event or existence of any condition that would cause a breach of any of the covenants set forth in this Paragraph 32.

32.6 Tenant's Remediation Obligations

If Tenant's use of Hazardous Materials on or about the Premises results in a release, discharge or disposal of Hazardous Materials on, in, at, under, or emanating from, the Premises, the Building or the Project, Tenant agrees to investigate, clean up, remove or remediate such Hazardous Materials in full compliance with (1) the requirements of (A) all Environmental Laws and (B) any governmental agency or authority responsible for the enforcement of any Environmental Laws; and (2) any additional requirements of Landlord that are reasonably necessary to protect the value of the Premises, the Building or the Project.

32.7 Landlord's Inspections

Upon twenty-four (24) hours' notice to Tenant (except in the case of an emergency, in which event no advance notice shall be required), Landlord may inspect the Premises and surrounding areas for the purpose of determining whether there exists on or about the Premises any Hazardous Material or other condition or activity that is in violation of the requirements of this Lease or of any Environmental Laws. Such inspections may include, but are not limited to, entering upon the property adjacent to or surrounding the Premises with drill rigs or other machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the Term of this Lease. In the event (1) such inspections reveal the presence of any such Hazardous Material or other condition or activity caused by Tenant or its Agents in violation of the requirements of this Lease or of any Environmental Laws, or (2) Tenant or its Agents contribute or knowingly consent to the importation of any Hazardous Materials in, on, under, through or about the Premises, the Building or the Project or, through their actions, exacerbate the condition of or the conditions caused by any Hazardous Materials in, on, under, through or about the Premises, the Building or the Project, Tenant shall reimburse Landlord for the cost of such inspections within ten (10) days of receipt of a written statement therefor. Tenant will supply to Landlord such historical and operational information regarding the Premises and surrounding areas as may be reasonably requested to facilitate any such inspection and will make available for meetings appropriate personnel having knowledge of such matters. In the event Tenant vacates the Premises prior to the Expiration Date, Tenant shall give Landlord at least sixty (60) days' prior notice of its intention to vacate the Premises so that

Landlord will have an opportunity to perform such an inspection prior to such vacation. The right granted to Landlord herein to perform inspections shall not create a duty on Landlord's part to inspect the Premises, or liability on the part of Landlord for Tenant's use, storage, treatment or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

32.8 Landlord's Right to Remediate

Landlord shall have the right, but not the obligation, prior or subsequent to a Default, without in any way limiting Landlord's other rights and remedies under this Lease, to enter upon the Premises, or to take such other actions as it deems necessary or advisable, to investigate, clean up, remove or remediate any Hazardous Materials or contamination by Hazardous Materials present on, in, at, under, or emanating from, the Premises, the Building or the Project in violation of Tenant's obligations under this Lease or under any Environmental Laws. Notwithstanding any other provision of this Lease, Landlord shall also have the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve and appeal, at Tenant's expense, any action taken or order issued by any governmental agency or authority with regard to any such Hazardous Materials or contamination by Hazardous Materials. All reasonable costs and expenses paid or incurred by Landlord in the exercise of the rights set forth in this Paragraph 32 shall be payable by Tenant upon demand.

32.9 Condition of Premises Upon Expiration or Termination

Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of debris, waste or Hazardous Materials placed on, about or near the Premises by Tenant or Tenant's Agents, and in a condition which complies with (i) all Environmental Laws, and (ii) any additional requirements of Landlord that are reasonably necessary to protect the value of the Premises, the Building or the Project, including, without limitation, the obtaining of any closure permits or other governmental permits or approvals related to Tenant's use of Hazardous Materials in or about the Premises. Tenant's obligations and liabilities pursuant to the provisions of this Paragraph 32 shall survive the expiration or earlier termination of this Lease.

32.10 Tenant's Indemnification of Landlord

Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims, losses (including, without limitation, loss in value of the Premises, the Building or the Project and any losses to Landlord due to lost opportunities to lease any portions of the Premises to succeeding tenants due to the failure of Tenant to surrender the Premises upon the expiration or sooner termination of this Lease in accordance with the provisions of Paragraph 32.9 above), liabilities and expenses (including attorneys' fees) sustained by Landlord attributable to (1) any Hazardous Materials placed on or about the Premises, the Building or the Project by Tenant or Tenant's Agents, or (2) Tenant's breach of any provision of this Paragraph 32.

32.11 Landlord's Indemnification of Tenant

Landlord agrees to indemnify and hold harmless Tenant from and against any and all claims, losses, liabilities and expenses (including attorneys' fees, but specifically excluding lost

profits and consequential damages) actually sustained by Tenant attributable to any Hazardous Materials placed on or about the Premises, the Building or the Project by Landlord or Landlord's Agents, except to the extent the condition thereof has been exacerbated by Tenant or Tenant's Agents.

32.12 Limitation of Tenant's Liability

Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for the clean up or remediation of, and shall not be required to indemnify Landlord against any costs or liabilities attributable to, contamination by Hazardous Materials during the Term caused by third parties or Hazardous Materials place on or about the Premises (i) prior to the Commencement Date by third parties not related to Tenant or Tenant's Agents, or (ii) by Landlord at any time, except in any of the foregoing cases to the extent that Tenant or Tenant's Agents have contributed to or exacerbated the presence of such Hazardous Materials.

32.13 Survival

The provisions of this Paragraph 32 shall survive the expiration or earlier termination of this Lease.

33. NOTICES

All notices and demands which are required or may be permitted to be given to either party by the other hereunder shall be in writing and shall be sent by United States mail, postage prepaid, certified, or by personal delivery or overnight courier, addressed to the addressee at Tenant's Address or Landlord's Address as specified in the Basic Lease Information, or to such other place as either party may from time to time designate in a notice to the other party given as provided herein. Copies of all notices and demands given to Landlord shall additionally be sent to Landlord's property manager at the address specified in the Basic Lease Information or at such other address as Landlord may specify in writing from time to time. Notice shall be deemed given upon actual receipt (or attempted delivery if delivery is refused), if personally delivered, or one (1) business day following deposit with a reputable overnight courier that provides a receipt, or on the third (3rd) day following deposit in the United States mail in the manner described above.

34. WAIVER

The waiver of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No delay or omission in the exercise of any right or remedy of Landlord in regard to any Default by Tenant shall impair such a right or remedy or be construed as a waiver. Any waiver by Landlord of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provisions of this Lease.

35. HOLDING OVER

Any holding over after the expiration of the Term, without the express written consent of Landlord, shall constitute a Default and, without limiting Landlord's remedies provided in this Lease, such holding over shall be construed to be a tenancy at sufferance, at a rental rate equal to the greater of one hundred fifty percent (150%) of (i) the fair market rental value for the Premises as determined by Landlord or (ii) the Base Rent last due in this Lease, plus Additional Rent, and shall otherwise be on the terms and conditions herein specified, so far as applicable; provided, however, that in no event shall any renewal or extension option or other similar right or option contained in this Lease be deemed applicable to any such tenancy at sufferance. If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of Paragraphs 11 and 32.9, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Landlord made by any succeeding tenant or prospective tenant caused by such delay and losses to Landlord due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

36. SUCCESSORS AND ASSIGNS

36.1 Binding on Successors, Etc.

The terms, covenants and conditions of this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto. If Tenant shall consist of more than one entity or person, the obligations of Tenant under this Lease shall be joint and several.

36.2 Landlord's Right to Sell

Notwithstanding anything in this Lease to the contrary, Landlord shall have the right to sell, transfer or otherwise convey, either separately or jointly, its interest in the Building and/or the Project, and all of Landlord's related rights and obligations hereunder, to any Person.

37. TIME

Time is of the essence of this Lease and each and every term, condition and provision herein.

38. BROKERS

Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker except BT Commercial ("Broker") in relation to Tenant's lease of the Premises and/or the negotiating or making of this Lease, and each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party.

Landlord has paid or will hereafter pay the brokerage commissions due to BT Commercial in relation to Tenant's lease of the Premises. Nothing contained herein shall restrict Landlord from paying any fees owed by Landlord in connection with Tenant's lease of the Premises and/or the execution of this Lease to any constituent partner of Landlord (or any Affiliate of any such partner) and to any consultants providing services to Landlord in connection with the Project.

39. LIMITATION OF LIABILITY

Tenant agrees that, in the event of any default or breach by Landlord with respect to any of the terms of this Lease to be observed and performed by Landlord or with respect to the enforcement of an indemnity obligation of Landlord under this Lease (1) Tenant shall look solely to the then-current landlord's interest in the Building for the satisfaction of such indemnity obligation of Landlord or for satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord; (2) no other property or assets of Landlord, its partners, shareholders, officers, directors, employees, investment advisors, or any successor in interest of any of them (collectively, the "**Landlord Parties**") shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies; (3) no personal liability shall at any time be asserted or enforceable against the Landlord Parties; and (4) no judgment will be taken against the Landlord Parties (except for a judgment against Landlord which is enforceable only to the extent of Landlord's interest in the Building). The provisions of this Paragraph shall apply only to the Landlord and the parties herein described, and shall not be for the benefit of any insurer nor any other third party.

40. FINANCIAL STATEMENTS

Within ten (10) days after Landlord's request, Tenant shall deliver to Landlord the then current, or if Tenant is a publicly traded company, the publicly available financial statements of Tenant (including interim periods following the end of the last fiscal year for which annual statements are available), prepared, compiled or reviewed by a certified public accountant, including a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with GAAP.

41. RULES AND REGULATIONS

Tenant agrees to comply with such reasonable rules and regulations as Landlord may adopt from time to time for the orderly and proper operation of the Building and the Project. Such rules may include but shall not be limited to the following: (a) restriction of employee parking to a limited, designated area or areas in reasonable proximity to the Building; and (b) regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant. The then current rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the failure of any other person to observe and abide by any of said rules and regulations; provided, however, that Landlord shall enforce such rules and regulation in a non-discriminatory manner. Landlord's current rules and regulations are attached to this Lease as ***Exhibit D***.

42. MORTGAGEE PROTECTION

42.1 Modifications for Lender

If, in connection with obtaining financing for the Project or any portion thereof, Landlord's lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant shall not unreasonably withhold, delay or defer its consent to such modifications, provided that such modifications do not materially adversely affect Tenant's rights or increase Tenant's obligations under this Lease.

42.2 Rights to Cure

Tenant agrees to give to any trust deed or mortgage holder ("**Holder**"), by registered mail, at the same time as it is given to Landlord, a copy of any notice of default given to Landlord, provided that prior to such notice Tenant has been notified, in writing, (byway of notice of assignment of rents and leases, or otherwise) of the address of such Holder. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Holder shall have an additional twenty (20) days after expiration of such period, or after receipt of such notice from Tenant (if such notice to the Holder is required by this Paragraph 42.2), whichever shall last occur within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such twenty (20) days, any Holder has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event there shall be no default under this Lease.

43. ENTIRE AGREEMENT

This Lease, including the Exhibits and any Addenda attached hereto, which are hereby incorporated herein by this reference, contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein or therein, shall be of any force and effect. Without limiting the foregoing, the terms and provisions of that certain Option to Lease Agreement dated as of February 17, 1999, entered into by the parties hereto concurrently with the execution of the 901 Gateway Lease, shall be of no further force or effect and shall be deemed superseded in their entirety by the terms and provisions contained in this Lease.

44. INTEREST

Any installment of Rent and any other sum due from Tenant under this Lease which is not received by Landlord when due shall bear interest from the date such payment was originally due under this Lease until paid at an annual rate equal to the maximum rate of interest permitted by law. Payment of such interest shall not excuse or cure any Default by Tenant. In addition, Tenant shall pay all costs and reasonable attorneys' fees incurred by Landlord in collection of such amounts.

45. INTERPRETATION

This Lease shall be construed and interpreted in accordance with the laws of the State of California. The parties acknowledge and agree that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Lease, including the Exhibits and any Addenda attached hereto. All captions in this Lease are for reference only and shall not be used in the interpretation of this Lease. Whenever required by the context of this Lease, the singular shall include the plural, the masculine shall include the feminine, and vice versa. If any provision of this Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. Unless otherwise specifically stated herein to the contrary, Landlord's consent may be given or withheld in Landlord's sole and absolute discretion.

46. REPRESENTATIONS AND WARRANTIES

46.1 Of Tenant

Tenant hereby makes the following representations and warranties, each of which is material and being relied upon by Landlord, is true in all respects as of the date of this Lease, and shall survive the expiration or termination of the Lease.

(1) If Tenant is an entity, Tenant is duly organized, validly existing and in good standing under the laws of the state of its organization and the persons executing this Lease on behalf of Tenant have the full right and authority to execute this Lease on behalf of Tenant and to bind Tenant without the consent or approval of any other person or entity. Tenant has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms.

(2) Tenant has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

46.2 Of Landlord

Landlord hereby makes the following representations and warranties, each of which is material and being relied upon by Tenant, is true in all respects as of the date of this Lease, and shall survive the expiration or termination of the Lease.

(1) If Landlord is an entity, Landlord is duly organized, validly existing and in good standing under the laws of the state of its organization and the persons executing this Lease on behalf of Landlord have the full right and authority to execute this Lease on behalf of Landlord and to bind Landlord without the consent or approval of any other person or entity. Landlord has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all

of its obligations hereunder. This Lease is a legal, valid and binding obligation of Landlord, enforceable in accordance with its terms.

(2) Landlord has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

47. SECURITY

47.1 Landlord Not Obligated to Provide Security

Tenant acknowledges and agrees that, while Landlord may engage security personnel to patrol the Building or the Project, Landlord is not required to provide any security services with respect to the Premises, the Building or the Project and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises, the Building or the Project.

47.2 Tenant's Obligation to Comply with Security Measures

Tenant hereby agrees to the exercise by Landlord and Landlord's Agents, within their sole discretion, of such security measures as, but not limited to, the evacuation of the Premises, the Building or the Project for cause, suspected cause or for drill purposes, the denial of any access to the Premises, the Building or the Project and other similarly related actions that it deems necessary to prevent any threat of property damage or bodily injury. The exercise of such security measures by Landlord and Landlord's Agents, and the resulting interruption of service and cessation of Tenant's business, if any, shall not be deemed an eviction or disturbance of Tenant's use and possession of the Premises, or any part thereof, or render Landlord or Landlord's Agents liable to Tenant for any resulting damages, or relieve Tenant from Tenant's obligations under this Lease.

48. JURY TRIAL WAIVER

Landlord and Tenant each hereby waive any right to trial by jury with respect to any action or proceeding (i) brought by Landlord, Tenant or any other party, relating to (A) this Lease and/or any understandings or prior dealings between the parties hereto, or (B) the Premises, the Building or the Project or any part thereof, or (ii) to which Landlord is a party. The parties each hereby agree that this Lease constitutes a written consent to waiver of trial by jury pursuant to the provisions of California Code of Civil Procedure Section 631.

49. OPTION TO RENEW

Tenant shall have two (2) options (each a "**Renewal Option**") to extend the Term of this Lease with respect to the entire Premises for successive periods of five (5) years each (each a

"**Renewal Term**"). Each Renewal Option shall be effective only if (i) Tenant is not in Default under this Lease and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a Default hereunder, either at the time of exercise of the Renewal Option or the time of commencement of the Renewal Term, and (ii) concurrently with the exercise of each such Renewal Option hereunder, Tenant validly exercises the corresponding renewal option contained in Paragraph 49 of the 901 Gateway Lease.

49.1 Commencement Dates

If Tenant exercises the first Renewal Option in accordance herewith, the first Renewal Term shall commence on the day following the last day of the initial Term and end on the day preceding the fifth anniversary thereof. If Tenant exercises the second Renewal Option, the second Renewal Term shall commence on the day following the last day of the first Renewal Term and end on the day preceding the fifth anniversary thereof. The second Renewal Option may not be exercised unless Tenant has previously exercised the first Renewal Option hereunder and under the 901 Gateway Lease. Each Renewal Term, if properly exercised, shall be upon the same terms and conditions as the Lease except for Monthly Base Rent (which shall be determined as provided in the following provisions of this Paragraph).

49.2 Renewal Option is Personal; Non-Transferable

The Renewal Option shall be personal to Tenant, any transferee under a Permitted Transfer, and any assignee to whom Tenant assigns its entire right, title and interest under, or any sublessee to whom Tenant subleases the entire Premises for the entire remaining Term of, this Lease, and shall not be assignable or otherwise transferable in whole or in part, voluntarily or by operation of law, to any other permitted assignee, subtenant or other third parties and there shall be no further Renewal Option beyond the expiration of the second Renewal Term.

49.3 Tenant's Notice of Exercise

In order to exercise a Renewal Option, Tenant shall give written notice to Landlord of Tenant's exercise of such election ("**Tenant's Notice**") at least ten (10) months prior to expiration of the then current Term and if such notice is not so given, the Renewal Option shall lapse; the Tenant hereby expressly acknowledges and agrees that time is of the essence for purposes of notice of exercise of a Renewal Option and that Tenant's failure to do so by said date will relieve Landlord of any obligation under this Paragraph. If Tenant gives such notice within the time prescribed, Landlord and Tenant shall be deemed to have entered into an extension of this Lease for a five (5) year extended term on the terms and conditions set forth herein.

49.4 Monthly Base Rent During Renewal Term

The Monthly Base Rent payable during any Renewal Term shall be an amount equal to the greater of (i) the Monthly Base Rent payable for the last month of the then expiring Term (provided that such Monthly Base Rent shall be increased during each year of the Renewal Term to an amount equal to one hundred three percent (103%) of the Monthly Base Rent payable during the immediately preceding term), or (ii) ninety-five percent (95%) of the Fair Market Rent (as hereinafter defined) for the Premises during such Renewal Term.

49.4.1 Fair Market Rent Definition

"**Fair Market Rent**" shall mean the rate being charged for comparable office/R&D/laboratory space in comparable locations in the South San Francisco/Brisbane market area, taking into consideration: tenant credit, tenant improvements or allowances provided or to be provided and leasing commissions, but specifically excluding Tenant's Property, any specialized laboratory improvements or other Tenant Improvements actually paid for by Tenant (as determined in accordance with Paragraph 12.6 above).

49.4.2 Determination of Fair Market Rent

Landlord and Tenant shall meet and attempt in good faith to mutually determine the Fair Market Rent for any Renewal Term. If the parties have not reached agreement on the Fair Market Rent by the date that is thirty (30) days after Landlord's receipt of Tenant's Notice, each party shall appoint an arbitrator and shall give to the other party notice of the identity of the arbitrator no later than the date that is forty (40) days after Landlord's receipt of Tenant's Notice. If either party fails to appoint an arbitrator by the date that is forty (40) days after Landlord's receipt of Tenant's Notice, the sole arbitrator appointed, if any, shall determine the Fair Market Rent. If two arbitrators are appointed, they shall immediately meet and attempt to agree upon such Fair Market Rent. If the arbitrators cannot reach agreement on the Fair Market Rent by the date that is sixty (60) days after Landlord's receipt of Tenant's Notice, each arbitrator shall submit a determination of Fair Market Rent to Landlord and Tenant. If the determinations of Fair Market Rent made by these two arbitrators vary by ten percent (10%) or less, the Fair Market Rent shall be the average of the two determinations. If the determinations vary by more than ten percent (10%), the two arbitrators shall within ten (10) days after submission of their determinations appoint a third arbitrator. If the two arbitrators shall be unable to agree on the selection of a third arbitrator within the 10-day period, then either Tenant or Landlord may request such appointment by petitioning the presiding judge of the Superior Court in and for the County of San Mateo. Such third arbitrator shall, within thirty (30) days after appointment, make a determination of the Fair Market Rent and submit such determination to Landlord and Tenant. The Fair Market Rent shall be the determination of Fair Market Rent submitted by the original two arbitrators that is closer to the Fair Market Rent determination of the third arbitrator. If the third arbitrator's determination is exactly between the Fair Market Rent determination of the original two arbitrators, then the Fair Market Rent shall be the average of the original two determinations. The determination of Fair Market Rent pursuant to this Paragraph 49 shall be final and binding on Landlord and Tenant.

49.4.3 Arbitrator Qualifications

For purposes of this Paragraph, "**arbitrator**" shall mean a licensed commercial real estate broker or leasing agent with not less than five (5) years of full-time commercial brokerage experience in San Mateo County.

49.4.4 Fees and Costs of Arbitrators

Each party shall bear the fees and costs of its arbitrator in connection with the determination of Fair Market Rent and one-half of the fees and costs of the third arbitrator, if any.

49.4.5 Arbitration Period Base Rent

If the determination of Fair Market Rent has not been made by the expiration of the then expiring Term, Tenant shall (i) continue to pay Monthly Base Rent at the Monthly Base Rent for the last month of the Term (the "**Arbitration Period Base Rent**") as well as any Additional Rent due under the Lease and (ii) pay to Landlord, or receive as a refund from Landlord, as applicable, on the first day of the month after the determination of Fair Market Rent is made, an amount, if any, equal to the difference between the Arbitration Period Base Rent that was paid to Landlord and the Monthly Base Rent for the Renewal Term that should have been paid to Landlord as the Monthly Base Rent for the Renewal Term as determined hereunder.

50. PARKING

50.1 Grant of Parking License

Provided that Tenant shall comply with and abide by Landlord's parking rules and regulations from time to time in effect, Tenant shall have a license to use for the parking of passenger automobiles the number of non-exclusive and undesignated parking spaces set forth in the Basic Lease Information in the areas designated for parking by Landlord from time to time (the "**Designated Parking Areas**"). Notwithstanding the foregoing, Landlord shall not be required to enforce Tenant's right to use any such parking spaces (but Landlord shall use commercially reasonable efforts to resolve any problems related to parking); and provided, further, that the number of parking spaces allocated to Tenant hereunder shall be reduced on a proportionate basis in the event any of the parking spaces in the Designated Parking Areas are taken or otherwise eliminated as a result of any Condemnation or casualty event affecting such Designated Parking Areas. Notwithstanding the foregoing provisions of this Paragraph 50.1, Landlord shall have the right to relocate Tenant's parking from time to time to other areas within the Project and to provide parking spaces to Tenant in surface parking lots, parking structures or other areas now or hereafter designated by Landlord as the "**Project's Parking Areas**." All unreserved spaces will be on a first-come, first-served basis in common with other tenants of and visitors to the Project in parking spaces provided by Landlord from time to time in the Project's Parking Areas. Tenant's license to use the parking spaces provided for herein shall be subject to such terms, conditions, rules and regulations as Landlord or the operator of the Parking Area may impose from time to time.

50.2 No Assignment of Parking License

The license granted hereunder is for self-service parking only and does not include additional rights or services except to the extent that Landlord elects in its sole and absolute discretion to provide any such services.

50.3 Visitor Parking

Tenant recognizes and agrees that visitors, clients and/or customers (collectively the "**Visitors**") to the Project and the Premises must park automobiles or other vehicles only in areas designated by Landlord from time to time as being for the use of such Visitors and Tenant hereby agrees to ask its Visitors to park only in the areas designated by Landlord from time to time for the use of Tenant's Visitors.

51. RIGHT OF FIRST OFFER

51.1 Offer Notice

If subsequent to the full execution of this Lease, Landlord desires to sell the Building, Landlord shall notify Tenant in writing of such intent to sell (the "**Offer Notice**"); provided, however, that Landlord shall not be required to provide Tenant with the Offer Notice with respect to the Building if Landlord has previously terminated this Lease or recaptured the Premises. This Right of First Offer shall be personal to Tenant and any transferee under a Permitted Transfer and shall not be assignable or otherwise transferable in whole or in part, voluntarily or by operation of law, to any other permitted assignee, subtenant or other third parties. Tenant's right to receive the Offer Notice shall further be effective only if Tenant is not in Default under this Lease and no event has occurred which with the giving of notice or the passage of time, or both, would constitute a Default hereunder. Subject to Paragraph 51.4 below, Tenant's right to receive an Offer Notice in accordance with this Paragraph 51.1 shall be a one-time right.

51.2 Election Notice

In the event Tenant desires to purchase the Building, Tenant shall notify Landlord in writing of its election to purchase the Building (the "**Election Notice**") within ten (10) days following Tenant's receipt of the Offer Notice. If Tenant delivers an Election Notice to Landlord, Tenant shall acquire the Building on an "**AS IS**" basis and without any representations or warranties from Landlord.

51.3 Purchase and Sale Agreement

In the event Tenant timely delivers the Election Notice to Landlord, the parties shall thereafter execute a purchase and sale agreement prepared by Seller's counsel (the "**Purchase and Sale Agreement**") with the purchase price of the Building (the "**Purchase Price**") equal to the quotient of the Net Operating Income (as defined below) of the Building divided by nine one hundredths (.09) and with a closing (the "**Closing**") to be held on or before the date that is forty-five (45) days after delivery of the Offer Notice.

51.4 Failure to Exercise or Sign Agreement

If Tenant fails to deliver an Election Notice within the 10-day time period, or if for any reason whatsoever Tenant has not executed the Purchase and Sale Agreement within ten (10) days after its receipt thereof from Landlord, Tenant's right to purchase the Building hereunder shall automatically terminate and be of no further force and effect with respect to Landlord or any other Person (as hereinafter defined) and Landlord shall thereafter have the right to sell the Building at any time to any Person on terms acceptable to Landlord in its sole and absolute discretion. Notwithstanding the foregoing, if Landlord fails to enter into a letter of intent or purchase and sale agreement for the sale of the Building to any such Person within two hundred seventy (270) days after the date Tenant's right to purchase the Building lapses pursuant to this Paragraph 51.4, then Tenant's rights under this Paragraph 51 shall be reinstated and Landlord shall once again furnish Tenant with an Offer Notice prior to selling the Building to a Person other than a Landlord Affiliate. Tenant hereby expressly acknowledges and agrees that time is of

the essence for purposes of the Election Notice and the ten (10) day period to execute the Purchase and Sale Agreement and that Tenant's failure to deliver such Election Notice or the executed Purchase and Sale Agreement as specified herein will relieve Landlord of any obligation under this Paragraph.

51.5 Net Operating Income

As used herein, "Net Operating Income" shall mean the Monthly Base Rent due under the Lease with respect to the Building being purchased for the twelve (12) full calendar months following the Offer Notice or, if the Offer Notice is given prior to the Commencement Date, the Monthly Base Rent for the Premises for the twelve (12) full calendar months following the Commencement Date, and Tenant shall receive a credit against the Purchase Price equal to the cost (calculated as of the date of Closing) reasonably estimated by Landlord to complete the Base Building Improvements (exclusive of any Tenant Requested Base Building Improvements and any improvements or costs required to be paid by Tenant under the terms of the Lease), assuming for purposes of this determination that the Base Building Improvements for the Building shall be similar in design and quality to the Base Building Improvements constructed by Landlord under the 901 Gateway Lease. As used in this Paragraph 51.5, Monthly Base Rent shall mean the scheduled Monthly Base Rent set forth in the Basic Lease Information plus the monthly installment of principal and interest required to be paid on the Deferred Allowance, if any, pursuant to Section D of ***Exhibit B***.

51.6 Landlord's Sale to Affiliate; Survival of Option

Notwithstanding anything in this Paragraph to the contrary, this Paragraph shall be inapplicable to, and neither Landlord nor any person or entity providing financing to Landlord in connection with the Building ("**Lender**") shall have any obligation to provide an Offer Notice to Tenant in connection with (i) any sale, conveyance or other transfer or proposed sale, conveyance or other transfer of the Building to any Person who controls, is controlled by or is under common control with, Landlord or Lender or any Person in which Hines Interest Limited Partnership or Morgan Stanley Real Estate Investment Fund maintains an interest (collectively, a "**Landlord Affiliate**"), or (ii) any foreclosure sale or deed-in-lieu of foreclosure or the exercise of any similar remedy (collectively, a "**Foreclosure**") by any Lender. As used herein "**Person**" shall mean any natural person, corporation, firm, association or other entity, whether acting in an individual, fiduciary or other capacity. Tenant's rights under this Paragraph 51.6 shall survive Landlord's transfer pursuant to clause (i) of this Paragraph 51.6 but shall not survive any Foreclosure.

51.7 Concurrent Exercise of Rights of First Offer with respect to 901 Gateway Boulevard and 951 Gateway Boulevard

Notwithstanding anything to the contrary contained in this Paragraph 51, if Landlord concurrently delivers to Tenant an Offer Notice under this Lease and an Offer Notice under Paragraph 51 of the 901 Gateway Lease, then Tenant shall have the right to exercise the Right of First Offer contained in this Paragraph 51 only if it concurrently and validly exercises the Right of First Offer granted to Tenant under Paragraph 51 of the 901 Gateway Lease. Any attempt by Tenant to deliver an Election Notice under Paragraph 51.2 above without the concurrent delivery

of an Election Notice under Paragraph 51.2 of the 901 Gateway Lease (assuming that Landlord has delivered to Tenant Offer Notices under both this Lease and the 901 Gateway Lease) shall be null and void and of no force or effect.

52. MEMORANDUM OF LEASE

Promptly after full execution of this Lease, Landlord and Tenant shall execute and cause to be recorded a Memorandum of Lease in the form attached hereto as ***Exhibit G***.

Landlord and Tenant have executed and delivered this Lease effective as of the Lease Date specified in the Basic Lease Information.

LANDLORD: HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
Administrative Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: /s/ JAMES C. BUIE JR.

Name: JAMES C. BUIE JR.
Its: EVP

TENANT: ADVANCED MEDICINE, INC.,
a Delaware corporation

By: /s/ A. GREG STURMER

Name: A. GREG STURMER
Its: VP FINANCE

EXHIBIT A

BASE BUILDING CONSTRUCTION AGREEMENT

This exhibit, entitled "**Base Building Construction Agreement**", is and shall constitute ***Exhibit A*** to the Lease Agreement, dated as of January 1, 2001, by and between Landlord and Tenant (the "**Lease**"). The terms and conditions of this ***Exhibit A*** are hereby incorporated into and are made a part of the Lease.

Subject to the terms and conditions set forth herein and in the Lease, Landlord shall cause construction of the Building in accordance with the procedures set forth below:

A. Definitions

1. "**Base Building Improvements**" shall mean a three (3) story building, containing approximately 60,000 square feet, all exterior surfaces, utilities, landscaping and paved parking, all in substantial compliance with those items listed on the 951 Gateway Preliminary Specifications as "**Base Building**" and located substantially in accordance with the Site Plan; provided, however, that the term "**Base Building Improvements**" shall not include any Tenant Requested Base Building Improvements.
2. "**Base Building Plans and Specifications**" is defined in Section B.1 below.
3. "**Building Work Cost**" is defined in Section B.3 below.
4. "**Contractor**" shall mean a licensed general contractor selected by Landlord and approved by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed.
5. "**Construction Warranties**" is defined in Section D.3 below.
6. "**Landlord's Architect**" shall mean Dowler Gruman Architects or another architect selected by Landlord in Landlord's reasonable discretion.
7. "**Landlord's Contract**" shall mean the construction contract entered into by and between Landlord and the Contractor for the construction of the Base Building Improvements and any Tenant Requested Base Building Improvements.
8. "**Original Base Building Plans and Specifications**" shall mean the plans and specifications for the two (2) story building, comprising approximately 50,000 square feet, together with all exterior surfaces, utilities, landscaping and paved parking associated therewith, which was to have been constructed by Landlord pursuant to the Original 951 Lease, which plans and specifications were titled "**Preliminary Construction Documents dated August 24, 2000**," and were prepared by Dowler Gruman Architects.
9. "**951 Gateway Preliminary Specifications**" shall mean those preliminary specifications for construction of the Base Building Improvements categorized as "**Base Building**" and more particularly described on the attached ***Exhibit A-1***.

10. "**Site Plan**" shall mean the site plan set forth on the attached***Exhibit A-2*** establishing the approximate location of the Building.

11. "**Tenant Requested Base Building Improvements**" shall mean those improvements requested by Tenant in accordance with this***Exhibit A*** that are to be incorporated into the Base Building Plans and Specifications.

Capitalized terms not otherwise defined in this *Exhibit A* shall have the meanings ascribed to them in the Lease.

B. Schedule

1. *Plans and Specifications.* Landlord's Architect has previously prepared the Original Base Building Plans and Specifications. At Tenant's request, Landlord has obtained the governmental approvals, permits and variances required for the construction of the Base Building Improvements contemplated under this Lease (the "**Expansion Approvals**"). At Tenant's sole cost and expense, Landlord's Architect shall modify and amend the Original Base Building Plans and Specifications, on or before Friday, February 23, 2001, to incorporate any changes necessary to accommodate construction of all of the Base Building Improvements substantially in accordance with the 951 Gateway Preliminary Specifications (the "**Base Building Plans and Specifications**"). Tenant shall have the right to approve the Base Building Plans and Specifications only to the extent such plans and specifications reflect any changes to the Original Base Building Plans and Specifications which are material deviations from the 951 Gateway Preliminary Specifications; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed; and provided,, further, that if Tenant fails to respond within ten (10) days following Landlord's request for approval, Tenant shall be conclusively deemed to have given its approval to the matter submitted by Landlord. Notwithstanding the foregoing, the Base Building Plans and Specifications are, from time to time, subject to change in Landlord's discretion, upon written consent from Tenant, which consent shall not be unreasonably withheld, conditioned or delayed; and provided, further, that if Tenant fails to respond within five (5) business days following Landlord's request for consent, Tenant shall be conclusively deemed to have given its consent to any such change. Landlord may without the written consent of the Tenant change the Base Building Plans and Specifications as may be required by any governmental agency or as necessary to comply with any governmental requirements or to address structural or unanticipated field conditions or which, in the reasonable discretion of Landlord, will not have a material effect on Tenant's use of the Premises or a material effect on the aesthetic appearance or impression relating to the Base Building Improvements.

2. *Tenant Requested Base Building Improvements.* On or before Friday, February 23, 2001, Tenant shall deliver to Landlord's Architect detailed specifications for any Tenant Requested Base Building Improvements. Landlord shall have ten (10) days from its receipt of such specifications to approve or disapprove the Tenant Requested Base Building Improvements. Landlord's approval may be given or withheld in Landlord's reasonable discretion, to ensure, among other things, that the Tenant

Requested Base Building Improvements are compatible with all other construction and all Systems within the Building. If Landlord disapproves the Tenant Requested Base Building Improvements, then within five (5) business days thereafter, Landlord shall meet with the Tenant's Architect (as defined in ***Exhibit B***) and Tenant to discuss, or shall submit to Tenant's Architect and Tenant in writing, the reasons for Landlord's disapproval. Within five (5) business days following such meeting or submission, Tenant shall cause Tenant's Architect to revise the same and to submit new specifications for the Tenant Requested Base Building Improvements to Landlord. The procedure set forth in this paragraph will be repeated as set forth above until Landlord has approved the Tenant Requested Base Building Improvements.

3. *Estimate of Building Work Costs.* Following the approval by Landlord of the Tenant Requested Base Building Improvements, Landlord shall furnish Tenant with an estimate of the cost of the Tenant Requested Base Building Improvements (the "**Building Work Cost**").

4. *Tenant's Review of Building Work Cost.* The Building Work Cost shall be subject to Tenant's approval, which approval shall not be unreasonably withheld, conditioned or delayed; and provided, further, that if Tenant fails to respond within five (5) business days following Landlord's request for consent, Tenant shall be conclusively deemed to have given its approval to the Building Work Cost. If Tenant timely disapproves the Building Work Cost, then within five (5) business days thereafter, Tenant shall meet with Landlord, Contractor, Landlord's Architect and Tenant's Architect to discuss value engineering changes to the Tenant Requested Base Building Improvements. Within five (5) business days following such meeting, Tenant shall cause Tenant's Architect to revise the Tenant Requested Base Building Improvements and to submit revised specifications for approval by Landlord in accordance with the procedure set forth above and for a new Building Work Cost to be prepared by Landlord. The procedure set forth in this paragraph will be repeated until Tenant has approved the Building Work Cost.

5. *Revision of Plans & Specifications.* Following Landlord's approval of the Tenant Requested Base Building Improvements and Tenant's approval of the Building Work Cost, Landlord shall cause Landlord's Architect to revise the Base Building Plans and Specifications to incorporate the Tenant Requested Base Building Improvements.

C. Construction

The Base Building Improvements shall be constructed, at Landlord's sole cost and expense, by Contractor in accordance with the Base Building Plans and Specifications, as the same may be amended or modified from time to time by Landlord.

D. General

1. *Landlord's Covenant.* Subject to the terms and conditions of the Lease and the conditions precedent set forth in Section D.1 above, Landlord covenants that the Base Building Improvements shall be free from material latent defects in design, materials

and workmanship. Any claims by Tenant under this Section D.1 shall be made in writing not later than one (1) year after the Commencement Date. In the event Tenant fails to deliver a written claim to Landlord on or before the applicable date set forth above, then Landlord shall be conclusively deemed to have satisfied its obligations under this paragraph. The covenants contained in this paragraph are subject to Paragraph 39 of the Lease and are made specifically and exclusively for the benefit of the original Tenant and any assignee or sublessee under a Permitted Transfer pursuant to Paragraph 23.4 of the Lease.

2. *Construction Warranties.* Landlord shall obtain from Contractor, and shall request Contractor to obtain from all subcontractors and material suppliers, warranties (collectively, "**Construction Warranties**") for all components of the Base Building Improvements for which warranties are customarily provided in the construction industry and Landlord shall enforce the Construction Warranties as reasonably requested by Tenant.

3. *Special Provisions regarding Construction of Bridge.* At the request of Tenant submitted to Landlord in accordance with Section B.2 above, Landlord shall consent to the construction of a pedestrian bridge (the "**Bridge**") connecting the Building to the 901 Gateway Premises in a location approved by Landlord in writing, subject, however, to the issuance by the City of all required permits and approvals for the construction of the Bridge and compliance by Tenant with all of the terms and provisions of said Section B.2, including, without limitation, the delivery to and approval by Landlord of detailed plans and specifications for the Bridge and all required alterations to the facades of the Building and the 901 Gateway Premises.

INITIALS:

TENANT: /s/ A. Greg Sturmer

LANDLORD: /s/ James C. Buie, Jr.

EXHIBIT A-1

951 GATEWAY PRELIMINARY SPECIFICATIONS

A "cold shell" standard shell for each building shall be constructed per all governmental codes by Landlord for Tenant, including, but not limited to, the following:

Structure/Envelope

- Concrete foundation to be reinforced grade beams with spread footings or other system as specified by geotechnical and engineering consultants.
- Ground floor to be concrete slab, minimum thickness 5", level to FF-20, FL-15, on grade or as required by geotechnical and engineering consultants with a minimum of 4" drain rock, 2" sand cushion and a 10 mil vapor barrier, but in no event a mar slab.
- Second and third floors to have vented metal decking with reinforced concrete topping slab which meets fire inspection code and flat to FF-20.
- Building structural framing to consist of reinforced steel "braced frame" with beams and columns constructed using rolled shapes. Cross bracing at exterior.
- Non-bearing exterior curtain wall consisting of EIFS, with exterior containing a minimum average of 40% glass with ribbon windows of high performance glass (minimum shading coefficient of .67).
- Floor system designed with live load capacity of 120 psf.
- Roof live load to be 50 psf in all bays.
- Floor to floor heights to be 17'-0".
- Roof drains and drain lines with connection to site storm drain system.
- Paved surface parking and structured parking adjacent to the Premises as required to provide tenant with the parking designated in the Lease.
- Roof screens up to 11'-0" in height above the roof as required by the City.
- Roofing membrane to be a four-ply asphalt built-up over rigid insulation over metal deck roof construction.
- Fire proofing of building structure, if required, to building code.
- Fire safing between floors to maintain code required separations.
- Perimeter and roof base building insulation per Title 24 requirements.

Utilities

- 2,000 amp 277/480 volt, 3-phase electric service and transformer with underground electrical to switchgear and meter.
- “House power” panels and transformer for site lights and irrigation.
- One gas service to exterior meter.
- Four (4), 4" telephone and data conduits. Stubbed to building.
- Site storm drain system.
- Domestic water service with meters, backflow preventers and check assembly located per California Water Service requirements.
- Sanitary sewer to and including main line under ground floor slab.
- Complete light hazard automatic fire sprinkler system to meet NFPA standards (excluding drops to suspended ceilings).

Miscellaneous

- Exterior doors prepared with hardware and rough-in to provide for electronic security. Such security to be provided and installed by Tenant.
- All utility connection(s) and development fees for base building systems.
- Landscaping, hardscapes and automatic irrigation systems, including control systems.
- One (1) monument sign at each main entrance along Gateway Boulevard identifying The Gateway North Campus and the building address.
- Site lighting a minimum of one (1) foot candle per square foot, including control system.
- Two (2) sets of interior exit stairs per building and two corresponding exits; one set of exit stairs shall be extended to the roof for roof access.

EXHIBIT A2

SITE PLAN

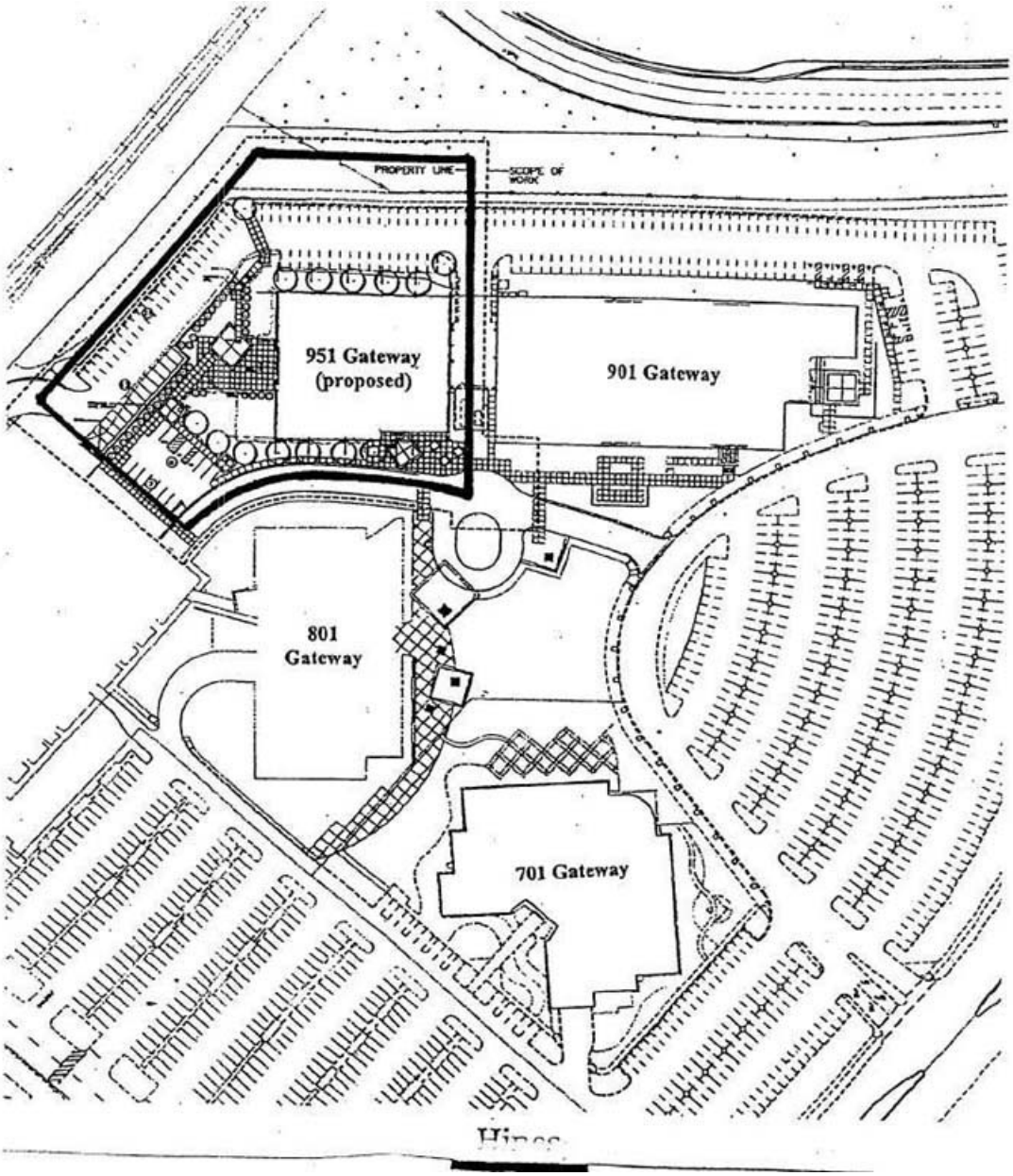

EXHIBIT B

PREMISES CONSTRUCTION AGREEMENT

This exhibit, entitled "Premises Construction Agreement", is and shall constitute ***Exhibit B*** to the Lease Agreement, dated as of January 1, 2001, by and between Landlord and Tenant (the "**Lease**"). The terms and conditions of this ***Exhibit B*** are hereby incorporated into and are made a part of the Lease.

Subject to the terms and conditions set forth herein and in the Lease, Landlord shall allow the construction or installation of the improvements in the interior of the Premises in accordance with the procedures set forth below:

A. Definitions

1. "**Approved Plans**" is defined in Section B.5 below.
2. "**Contractor**" shall mean the general contractor retained by Landlord pursuant to ***Exhibit A*** to the Lease.
3. "**Estimated Work Cost**" is defined in Section B.3 below.
4. "**Excess Tenant Improvements Costs**" is defined in Section B.6 below.
5. "**Final Cost Quotation**" is defined in Section B.6 below and shall include all costs associated with the Tenant Improvements, including, without limitation, costs of all tenant improvement work; architectural and engineering fees; governmental agency fees for permits, licenses and inspections; construction fees, including, without limitation, general contractors' overhead and supervision fees; and such other costs as may be incurred by Landlord in connection with such construction.
6. "**Preliminary Plans**" is defined in Section B.1 below.
7. "**Tenant Improvement Allowance**" shall mean the amount set forth in the Basic Lease Information as adjusted pursuant to the provisions thereof, which amount shall, except as otherwise provided in this ***Exhibit B***, be paid by Landlord toward the cost of completion of the Tenant Improvements (collectively, the "**Tenant Improvement Cost**"). The Tenant Improvement Allowance shall be subject to adjustment upon the final determination of the Premises square footage by Landlord's Architect. Notwithstanding the foregoing, (i) not less than an amount equal to per square foot of the Premises (the "**Warm Shell Allowance**") shall be expended on the improvements generally described on ***Exhibit B-1*** hereto, and (ii) the Tenant Improvement Allowance and the Deferred Allowance may not be used to pay the costs of Tenant Improvements that constitute furniture, equipment or trade fixtures or result in changes to the Base Building Improvements. If the Tenant Improvement Cost exceeds the Tenant Improvement Allowance, the difference shall be paid by Tenant in accordance with this ***Exhibit B***. If the total cost of constructing and installing the improvements described on ***Exhibit B-1*** is less than the Warm Shell

Allowance, then the Tenant Improvement Allowance shall be reduced by the difference and the difference shall not be disbursed to Tenant.

8. "**Tenant's Architect**" shall mean Dowler Gruman Architects or a replacement licensed architect selected by Tenant and approved by Landlord.

9. "**Tenant's Contract**" shall mean the construction contract entered into by and between Tenant and the Contractor for the construction of the Tenant Improvements.

10. "**Tenant Improvements**" shall mean all improvements made to the Premises pursuant to the Approved Plans, specifically excluding, however, any Tenant Requested Base Building Improvements (as defined in ***Exhibit A*** to the Lease). Without limiting the generality of the foregoing, the Tenant Improvements shall include and Tenant shall be responsible for the construction and installation of the improvements described on ***Exhibit B-1***.

11. "**Warm Shell Allowance**" is defined within the definition of Tenant Improvement Allowance in Section A.7 above.

Capitalized terms not otherwise defined in this ***Exhibit B*** shall have the meanings ascribed to them in the Lease.

B. Schedule

1. Tenant shall cause Tenant's Architect to furnish to Landlord preliminary space plans and specifications (the "**Preliminary Plans**") on or before February 15, 2001. The failure of Tenant's Architect to furnish Preliminary Plans to Landlord by February 15, 2001 shall constitute a Tenant Delay for all purposes of this Lease and shall not lead to a postponement of or adjustment to the Commencement Date. Tenant shall be responsible for all costs associated with the Preliminary Plans (collectively, the "**Preliminary Design Costs**"), including any revisions required by Section B.2 hereunder.

2. Landlord shall have ten (10) days from its receipt of the Preliminary Plans to approve or disapprove the same. Landlord's approval of the Preliminary Plans shall not be unreasonably withheld, conditioned or delayed. If Landlord disapproves the Preliminary Plans, then within five (5) business days thereafter, Landlord shall meet with Tenant's Architect and Tenant to discuss, or shall submit to Tenant's Architect and Tenant in writing, the reasons for Landlord's disapproval. Within five (5) business days following such meeting or submission, Tenant shall cause the Tenant's Architect to revise the same and to submit new Preliminary Plans to Landlord. The same procedure set forth in this paragraph will be repeated as set forth above until Landlord has approved the Preliminary Plans.

3. Promptly after approval of the Preliminary Plans, Tenant shall cause Contractor to furnish Landlord with an estimate of the cost of the Tenant Improvements as shown on the Preliminary Plans (the "**Estimated Work Cost**"). The Estimated Work Cost shall separately itemize all costs to complete the improvements described on ***Exhibit B-1*** hereto.

4. Following Contractor's calculation of the Estimated Work Cost, Tenant shall cause Tenant's Architect to prepare detailed construction drawings and specifications (the "**Working Drawings**") for the Tenant Improvements based strictly upon the Preliminary Plans, except as otherwise agreed in writing by Landlord and Tenant. Tenant shall be responsible for all costs associated with the Working Drawings. The Working Drawings shall be completed no later than April 15, 2001. The foregoing, any delay in the completion of the Working Drawings beyond April 15, 2001 shall constitute a Tenant Delay for all purposes of this Lease and shall not lead to a postponement of or adjustment to the Commencement Date.

5. Landlord shall have ten (10) days from its receipt of the Working Drawings to approve or disapprove the same. Landlord's approval of the Working Drawings shall not be unreasonably withheld, conditioned or delayed. If Landlord disapproves the Working Drawings, then within five (5) business days thereafter, Landlord shall meet with Tenant's Architect and Tenant to discuss, or shall submit to the Tenant's Architect and Tenant in writing, the reasons for Landlord's disapproval. Within five (5) business days following such meeting or submission, Tenant shall cause Tenant's Architect to revise the same and to submit new Working Drawings to Landlord, and the same procedure will be repeated as set forth above until Landlord has approved the Working Drawings (the "**Approved Plans**"). Upon approval of the Working Drawings, Landlord shall deliver to Tenant a list of Tenant Improvements to be removed by Tenant, at Tenant's cost and expense in accordance with Paragraph 11.2 of the Lease, upon expiration of the Term or earlier termination of the Lease. Notwithstanding the foregoing, during the preparation of the Working Drawings, Landlord shall, upon Tenant's request, advise Tenant of items that will be required to be removed pursuant to the previous sentence.

6. Within ten (10) business days after Landlord's approval of the Approved Plans, Tenant shall cause Contractor to furnish to Landlord a cost estimate for the Tenant Improvements based upon the Approved Plans (the "**Final Cost Quotation**"). The Final Cost Quotation shall separately itemize all costs to complete the improvements described on ***Exhibit B-1*** hereto. If the Final Cost Quotation is greater than the Tenant Improvement Allowance, Tenant shall be responsible for the difference between the Tenant Improvement Allowance and the Final Cost Quotation (the "**Excess Tenant Improvements Cost**"). If the Tenant Improvement Allowance exceeds the Final Cost Quotation, then the Excess Tenant Improvements Cost shall be zero.

7. Landlord and Tenant shall make progress payments on a pro rata basis (in the proportion that the Tenant Improvement Allowance paid by Landlord and the Excess Tenant Improvements Cost paid by Tenant, if any, bear to the Final Cost Quotation) from time to time as the Tenant Improvements are constructed in the Premises. Tenant shall pay its pro rata share of any progress payments directly to Contractor or subcontractors, as appropriate, and Landlord shall pay its pro rata share of any progress payments directly to Tenant's Contractor or subcontractors, as appropriate, subject to a reasonable retention as determined by Landlord. Landlord shall be entitled to suspend or terminate construction of the Tenant Improvements and to declare Tenant in default in accordance with the terms of the Lease if payment by Tenant of Tenant's pro rata

share of any progress payment has not been received by Contractor when due, as required hereunder. Moreover, Landlord shall not be required to pay its pro rata share of any progress payment until such time as Landlord receives from Tenant a draw request in a form approved by Landlord, which draw request shall be executed by Tenant, Tenant's Architect and Tenant's Contractor, together with a conditional lien waiver duly executed by Tenant's Contractor as to the progress payment then being requested by Tenant hereunder and an unconditional lien waiver for the immediately preceding progress payment made by Landlord. All lien waivers shall comply with California law regarding materialmen and mechanic's liens.

8. In the event that the Tenant Improvement Allowance exceeds the Final Cost Quotation, then promptly following the substantial completion of the Tenant Improvements, the payment in full of all costs of designing and constructing the Tenant Improvements, and the receipt by Landlord of unconditional lien waivers from Tenant's Contractor, subcontractors and material suppliers for all amounts due in connection with the Tenant Improvements, Landlord shall disburse the remaining Tenant Improvement Allowance to Tenant in a single lump-sum disbursement.

C. Tenant Improvement Construction

1. All Tenant Improvements to be constructed or installed in the Premises shall be performed by Contractor in accordance with the Approved Plans, subject to any changes agreed to by Landlord and Tenant in writing. Landlord shall have no obligation to Tenant for defects in design, workmanship or materials in connection with the Tenant Improvements. Any changes to the Approved Plans shall require the written approval of Landlord and Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. All such changes must be evidenced by a written change order executed by Landlord and Tenant or their respective representatives describing the change required in the Approved Plans, and the cost of such changes shall be paid in accordance with the terms of this ***Exhibit B***.

2. Tenant shall cause Contractor to construct the Tenant Improvements in a manner designed to avoid interference with the construction of the Base Building Improvements. Landlord and Tenant shall each use good faith efforts to reasonably resolve any issues or conflicts that may arise during the course of constructing the Tenant Improvements and the Base Building Improvements. Entry by Contractor in accordance with this ***Exhibit B*** shall not constitute Tenant's occupancy of the Premises under Paragraph 3 of the Lease; however, Tenant shall comply with all terms and conditions of the Lease (excluding only, prior to the Commencement Date, the obligation to pay Rent) during Contractor's occupancy of and work within the Premises. Tenant shall be responsible for maintaining harmonious labor relations with all contractors and service providers servicing the Premises.

3. In addition to and without limitation on the requirements set forth in the Lease, Tenant shall ensure that Contractor and all subcontractor(s) procure and maintain in full force and effect during the course of construction a "broad form" commercial general liability and property damage policy of insurance naming, Landlord, Tenant and

Landlord's lenders as additional insureds. The minimum limit of coverage of the aforesaid policy shall be in the amount of not less than Three Million Dollars ($3,000,000) for injury or death of one person in any one accident or occurrence and in the amount of not less than Three Million Dollars ($3,000,000) for injury or death of more than one person in any one accident or occurrence, and shall contain a severability of interest clause or a cross liability endorsement. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least One Million Dollars ($1,000,000).

D. Deferred Allowance

In addition to the Tenant Improvement Allowance, Landlord agrees to provide Tenant up to (*viz.*, per square foot) to be applied toward completion of the Tenant Improvements (the "**Deferred Allowance**") after the Tenant Improvement Allowance has been disbursed. The Deferred Allowance shall be subject to adjustment upon the final determination of the Premises square footage by Landlord's Architect. The Deferred Allowance shall be disbursed to Tenant, if at all, in a single lump-sum disbursement, shall be available to reimburse Tenant for costs actually incurred in connection with the design and construction of the Tenant Improvements (except that no portion of the Deferred Allowance may be used to pay the costs of Tenant Improvements that constitute furniture, equipment or trade fixtures or result in changes to the Base Building Improvements), shall be disbursed by Landlord upon the submission of draw requests and other documentation similar in form and content to that required in connection with the disbursement of the Tenant Improvement Allowance, and shall be subject to a reasonable retention as determined by Landlord. Tenant shall provide the aforesaid draw request and associated documentation to Landlord not less than ninety (90) days' prior to the date of the disbursement of the Deferred Allowance. The Deferred Allowance shall be repayable by Tenant to Landlord in substantially equal self-amortizing monthly installments over the remaining initial Term of the Lease (from and after the date of disbursement of the Deferred Allowance), together with interest on the balance outstanding from time to time from the date of disbursement at the following rates: interest shall accrue on the initial disbursed by Landlord at the per annum rate of and on the second disbursed by Landlord at the per annum rate of Such installments shall be payable on the first day of each month concurrently with the payment of Monthly Base Rent, and shall be deemed a part of the "**Rent**" hereunder for all purposes of this Lease. Concurrently with the disbursement of the Deferred Allowance, Landlord and Tenant shall execute a Deferred Allowance Amortization Memorandum in the form of ***Exhibit*** I hereto. Notwithstanding anything herein to the contrary, in the event the Lease shall terminate for any reason prior to the scheduled expiration thereof, the Deferred Allowance and all accrued and unpaid interest thereon shall immediately become due and payable in full.

E. General

1. All drawings, space plans, plans and specifications for any improvements or installations in the Premises are expressly subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any approval by Landlord of any drawings, plans or specifications prepared on behalf of

Tenant including, without limitation, any Preliminary Plans, Working Drawings or Approved Plans, or any revisions thereto, shall not in any way bind Landlord, create any responsibility or liability on the part of the Landlord for the completeness of the same, their design sufficiency or compliance with applicable statutes, ordinances or regulations or constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such drawings, plans or specifications, or the improvements to which they relate, but such approval shall merely evidence the consent of Landlord to such drawings, plans or specifications.

2. The Tenant Improvement Allowance (including, without limitation, the Warm Shell Allowance) and Deferred Allowance shall be used by Tenant to construct Tenant Improvements in the entire Premises and may not be used to improve only a portion or portions of the Premises. Tenant shall be deemed to have satisfied its obligations under this Section E.2 if Tenant constructs or installs, as appropriate, within the entire Premises, at a minimum, acoustical ceilings, HVAC, floor coverings, light fixtures and walls with a paint finish, all in accordance with applicable Laws and to a condition which allows for full legal occupancy of the Building, as evidenced by the receipt of a certificate of occupancy from the City. Notwithstanding the foregoing, Tenant shall only be required to improve the warehouse facilities, storerooms, electrical rooms and data rooms located within the Premises to the same condition to which such facilities and rooms were improved within the 901 Gateway Premises following the completion of construction of Tenant Improvements (as defined in the 901 Gateway Lease) in the 901 Gateway Premises.

3. Any failure by Tenant to pay any amounts due hereunder shall have the same effect under the Lease as a failure to pay Rent and any failure by Tenant to perform any of its other obligations hereunder shall be subject to Paragraph 24 of the Lease.

4. Tenant shall provide Landlord with as-built plans and specifications of the Tenant Improvements within forty-five (45) days after the Commencement Date.

INITIALS:

TENANT: /s/ A. Greg Sturmer

LANDLORD: /s/ James C. Buie, Jr.

EXHIBIT B-1

DESCRIPTION OF "WARM SHELL" IMPROVEMENTS

- Elevator(s) per code
- Stairs in excess of two (2) exit stairs provided as part of the 951 Gateway Preliminary Specifications
- Restrooms per code
- HVAC for standard office use (laboratory upgrades will not be funded out of the Warm Shell Allowance)
- Standard office lobby
- Electrical for standard office use (laboratory upgrades will not be funded out of the Warm Shell Allowance)
- Rooftop mechanical platform
- Roof Screens

EXHIBIT C

ADDITIONAL OPERATIONAL GUIDELINES

As a component of the Tenant Improvements and any Alterations made by Tenant to the Premises, Tenant shall install fume hoods, as well as a rooftop venting and exhaust system designed to increase the velocity of exhaust such that any odors shall be discharged high into the atmosphere in order to minimize the risk of odors detectable at ground level. In addition, Tenant shall install and utilize such additional venting, exhaust and quenching systems, including, without limitation, base quenching, distillation units, acid quenching, and mechanical exhaust/filtration systems, as appropriate to reduce the risk of emanation of such odors.

EXHIBIT D

RULES AND REGULATIONS

This exhibit, entitled "Rules and Regulations," is and shall constitute *Exhibit D* to the Lease Agreement, dated as of the Lease Date, by and between Landlord and Tenant for the Premises. The terms and conditions of this *Exhibit D* are hereby incorporated into and are made a part of the Lease. Capitalized terms used, but not otherwise defined, in this *Exhibit D* have the meanings ascribed to such terms in the Lease.

1. Tenant shall not use any method of heating or air conditioning other than that approved by Landlord in writing without the prior written consent of Landlord, which consent shall not to be unreasonably withheld, conditioned or delayed.

2. All window coverings installed by Tenant and visible from the outside of the Building require the prior written approval of Landlord.

3. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Project or the Adjacent Properties, except to the extent that Tenant is permitted to use the same in the Premises under the terms of Paragraph 32 of the Lease.

4. Tenant shall not alter any lock or install any new locks or bolts on any door at the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

5. Tenant shall not make any duplicate keys without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

6. Tenant shall park motor vehicles in parking areas designated by Landlord, including areas for loading and unloading. During those periods of loading and unloading, Tenant shall not unreasonably interfere with traffic flow around the Building or the Project and loading and unloading areas of other tenants.

7. Tenant shall not disturb, solicit or canvas any tenant or other occupant of the Building or Project and shall cooperate to prevent same.

8. No person shall go on the roof without Landlord's permission except as required to repair and maintain the same as required under the Lease.

9. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building, to such a degree as to be objectionable to Landlord or other tenants, shall be placed and maintained by Tenant, at Tenant's expense, on vibration isolators or in noise-dampening housing or other devices sufficient to eliminate noise or vibration.

10. All goods, including material used to store goods, delivered to the Premises of Tenant shall be immediately moved into the Premises and shall not be left in parking or receiving areas

overnight. During the period of construction of the Tenant Improvements and any Alterations, all construction materials shall be stored in a manner and a location mutually acceptable to Landlord and Tenant.

11. Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord.

12. Tenant shall not store or permit the storage or placement of goods or merchandise in or around the Common Areas surrounding the Premises. No displays or sales or merchandise shall be allowed in the Parking Areas or other Common Areas.

13. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises, the Building, the Project or any of the Common Areas which would violate applicable Laws or constitute a nuisance to the Premises, the Building or the Project. Tenant shall prior to the Commencement Date and thereafter from time to time upon the request of Landlord provide to Landlord a written plan for the handling and disposal of all animals used by Tenant in the conduct of its business, which plan shall be subject to the written approval of Landlord.

INITIALS:

TENANT: /s/ A. Greg Sturmer

LANDLORD: /s/ James C. Buie, Jr.

EXHIBIT E

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord to evaluate your proposed uses of the premises (the "**Premises**") and to determine whether to enter into a lease agreement with you as tenant. If a lease agreement is signed by you and the Landlord (the "**Lease Agreement**"), on an annual basis in accordance with the provisions of Paragraph 32 of the Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: HMS Gateway Office L.P.
c/o Hines
651 Gateway Boulevard, Suite 1140
South San Francisco, California 94080
Phone: (650)794-1111

Name of (Prospective) Tenant: Advanced Medicine, Inc.

Mailing Address: _____

_____

Contact Person, Title and Telephone Number(s): _____

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s): _____

_____

Address of (Prospective) Premises: _____

Length of (Prospective) initial Term: _____

_____

1. GENERAL INFORMATION:

Describe the proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled, and services and activities to be provided or otherwise conducted. Existing tenants should describe any proposed changes to on-going operations.

_____

_____

2. USE, STORAGE AND DISPOSAL OF HAZARDOUS MATERIALS

2.1 Will any Hazardous Materials (as hereinafter defined) be used, generated, treated, stored or disposed of in, on or about the Premises? Existing tenants should describe any Hazardous Materials which continue to be used, generated, treated, stored or disposed of in, on or about the Premises.

Wastes	Yes ☐	No ☐
Chemical Products	Yes ☐	No ☐
Other	Yes ☐	No ☐

If Yes is marked, please explain: _____

_____

_____

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, treated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials to be present on or about the Premises at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws, as hereinafter defined); and the proposed location(s) and method(s) of treatment or disposal for each Hazardous Material, including the estimated frequency, and the proposed contractors or subcontractors. Existing tenants should attach a list setting forth the information requested above and such list should include actual data from ongoing operations and the identification of any variations in such information from the prior year's certificate.

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage or treatment of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing tenants should describe any such actual or proposed activities.

Yes ☐ No ☐

If yes, please explain: _____

_____

_____

4. WASTE MANAGEMENT

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing tenants should describe any additional identification numbers issued since the previous certificate.

Yes ☐ No ☐

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing tenants should describe any new reports filed.

Yes ☐ No ☐

If yes, attach a copy of the most recent report filed.

5. WASTEWATER TREATMENT AND DISCHARGE

5.1 Will your company discharge wastewater or other wastes to:

☐ storm drain? ☐ sewer?

☐ surface water? ☐ no wastewater or other wastes discharged.

Existing tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

_____

_____

5.2 Will any such wastewater or waste be treated before discharge?

Yes ☐ No ☐

If yes, describe the type of treatment proposed to be conducted. Existing tenants should describe the actual treatment conducted.

_____

_____

6. AIR DISCHARGES

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes ☐ No ☐

If yes, please describe: _____

_____

_____

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing tenants should specify any such equipment being operated in, on or about the Premises.

☐ Spray booth(s) ☐ Incinerator(s)

☐ Dip tank(s) ☐ Other (Please describe)

☐ Drying oven(s) ☐ No Equipment Requiring Air Permits

If yes, please describe: _____

_____

_____

6.3 Please describe (and submit copies of with this Hazardous Materials Disclosure Certificate) any reports you have filed in the past [thirty-six] months with any governmental or quasi-governmental agencies or authorities related to air discharges or clean air requirements and any such reports which have been issued during such period by any such agencies or authorities with respect to you or your business operations.

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("Management Plan") or Hazardous Materials Business Plan and Inventory ("Business Plan") pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes ☐ No ☐

If yes, attach a copy of the Management Plan or Business Plan. Existing tenants should attach a copy of any required updates to the Management Plan or Business Plan.

7.2 Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations in, on or about the Premises listed or regulated under Proposition 65? Existing tenants should indicate whether or not there are any new Hazardous Materials being so used which are listed or regulated under Proposition 65.

Yes ☐ No ☐

If yes, please explain: _____

_____

_____

8. ENFORCEMENT ACTIONS AND COMPLAINTS

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes ☐ No ☐

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Paragraph 32 of the Lease Agreement.

_____

_____

_____

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes ☐ No ☐

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and other documents related thereto as requested by Landlord. Existing tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Paragraph 32 of the Lease Agreement.

8.3 Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing tenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises and the current status of any such problems or complaints.

Yes ☐ No ☐

If yes, please describe. Existing tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement and the current status of any such problems or complaints.

9. PERMITS AND LICENSES

9.1 Attach copies of all permits and licenses issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any Hazardous Materials permits, wastewater discharge permits, air emissions permits, and use permits or approvals. Existing tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

As used herein, "**Hazardous Materials**" shall mean and include any substance that is or contains (a) any "**hazardous substance**" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**") (42 U.S.C. § 9601 *et seq.*) or any regulations promulgated under CERCLA; (b) any "**hazardous waste**" as now or hereafter defined in the Resource Conservation and Recovery Act, as amended ("**RCRA**") (42 U.S.C. § 6901 *et seq.*) or any regulations promulgated under RCRA;

(c) any substance now or hereafter regulated by the Toxic Substances Control Act, as amended ("**TSCA**") (15 U.S.C. § 2601 *et seq.*) or any regulations promulgated under TSCA; (d) petroleum, petroleum by-products, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) asbestos and asbestos-containing material, in any form, whether friable or non-friable; (i) polychlorinated biphenyls; (g) lead and lead-containing materials; or (h) any additional substance, material or waste (A) the presence of which on or about the Premises (i) requires reporting, investigation or remediation under any Environmental Laws (as hereinafter defined), (ii) causes or threatens to cause a nuisance on the Premises or any adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or any adjacent property, or (iii) which, if it emanated or migrated from the Premises, could constitute a trespass, or (B) which is now or is hereafter classified or considered to be hazardous or toxic under any Environmental Laws; and "**Environmental Laws**" shall mean and include (a) CERCLA, RCRA and TSCA; and (b) any other federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (i) pollution, (ii) the protection or regulation of human health, natural resources or the environment, (iii) the treatment, storage or disposal of Hazardous Materials, or (iv) the emission, discharge, release or threatened release of Hazardous Materials into the environment.

The undersigned hereby acknowledges and agrees that this Hazardous Materials Disclosure Certificate is being delivered to Landlord in connection with the evaluation of a Lease Agreement and, if such Lease Agreement is executed, will be attached thereto as an exhibit. The undersigned further acknowledges and agrees that if such Lease Agreement is executed, this Hazardous Materials Disclosure Certificate will be updated from time to time in accordance with Paragraph 32 of the Lease Agreement. The undersigned further acknowledges and agrees that the Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the term, and any renewals thereof, of the Lease Agreement. I [print name] _____, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct.

(PROSPECTIVE) TENANT:

ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Title: _____

Date: _____

INITIALS:

TENANT: /s/ A. Greg Sturmer

LANDLORD: /s/ James C. Buie, Jr.

EXHIBIT F

TENANT'S PROPERTY

Laboratory related furniture and equipment including:

- benches and tables
- casework
- biosafety, laminar flow, and fume hoods
- cages/fencing
- DI water system
- vacuum pumps
- compressed air
- nitrogen manifold

Office related furniture and equipment including:

- open office partitions
- telephone and network equipment
- reception desk
- lobby furniture
- lobby display cases
- appliances
- interior signage

EXHIBIT G

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention:

(Space above this line for Recorder's use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is executed as of January 1, 2001, by and between HMS GATEWAY OFFICE, L.P., a Delaware limited partnership ("**Landlord**"), and ADVANCED MEDICINE, Inc., a Delaware corporation ("**Tenant**"). Landlord has previously leased to Tenant a portion of that certain real property described on ***Exhibit A*** attached hereto and incorporated herein by reference, consisting of the building commonly known as 951 Gateway Boulevard located in South San Francisco, California, commencing on January 1, 2001 and terminating on March 31, 2012 on the terms and conditions set forth in that certain Lease between Landlord and Tenant dated as of January 1, 2001 (the "**Off Record Lease**"). Landlord has also granted to Tenant options to renew the term of the Lease for two (2) additional periods of five (5) years each in accordance with the terms and conditions of the Off Record Lease.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease so that third parties might have notice of the lease by Landlord and Tenant herein.

LANDLORD: HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
Administrative Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: _____

Name: _____

Its: _____

TENANT: ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Name: _____

Its: _____

INITIALS:

TENANT: /s/ A. Greg Sturmer

LANDLORD: /s/ James C. Buie, Jr.

EXHIBIT H

DEFERRED ALLOWANCE AMORTIZATION MEMORANDUM

LANDLORD: HMS GATEWAY OFFICE, L.P.

TENANT: ADVANCED MEDICINE, INC.

LEASE DATE: January 1, 2001

PREMISES: Located at 951 Gateway Boulevard, South San Francisco, California

Tenant hereby acknowledges that Landlord has provided a Deferred Allowance to Tenant in the amount of_____ Dollars ($_____) pursuant to Paragraph D of ***Exhibit B*** to the Lease. Subject to the terms of the Lease and said ***Exhibit B***, the Deferred Allowance shall be repayable by Tenant, together with interest on the principal balance outstanding from time to time at the rates set forth below:

_____ Dollars ($_____) of the Deferred Allowance shall bear interest at the rate of per annum; and

_____ Dollars ($_____) of the Deferred Allowance shall bear interest at the rate of per annum.

The Deferred Allowance, together with interest at the rates set forth above, shall be payable in monthly installments of_____ Dollars ($_____) each. Said installments shall be payable on the first day of each month during the initial Term of the Lease (commencing with the first day of the first month following the disbursement of the Deferred Allowance) concurrently with the payment of Base Rent.

TENANT: ADVANCED MEDICINE, INC.,
a Delaware corporation

By: _____

Name: _____

Title: _____

Approved and Agreed:

LANDLORD:

HMS GATEWAY OFFICE, L.P.,
a Delaware limited partnership

By: Hines Gateway Office, L.P.,
General Partner

By: Hines Interests Limited Partnership,
General Partner

By: Hines Holdings, Inc.,
General Partner

By: _____

Name: _____

Title: _____

Exhibit 10.6

*CERTAIN INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS

AGREEMENT

between

THRESHOLD PHARMACEUTICALS INC.

and

BAXTER INTERNATIONAL INC.

and

BAXTER ONCOLOGY GmbH

For the Licensing and Development of Glufosfamide

THIS AGREEMENT is made, as of the date of signature of the last party to affix its signature hereto,

by and among

THRESHOLD Pharmaceuticals Inc., a corporation organized and existing under the laws of Delaware of the United States of America and having its head office at 951 Gateway Boulevard, Suite 3A, South San Francisco, CA 94080, United States of America (hereinafter referred to as "THRESHOLD"),

and

Baxter International Inc., a corporation organized and existing under the laws of Delaware of the United States of America and having its headquarters at One Baxter Parkway, Deerfield, Illinois 60015-4633. United States of America (hereinafter referred to as "BAXTER")

and

Baxter Oncology GmbH, a corporation organized and existing under the laws of the Federal Republic of Germany, having its head office at Daimlerstrasse 40, 60314 Frankfurt, Federal Republic of Germany (hereinafter referred to as "BAXTER ONCOLOGY");

WHEREAS BAXTER and/or BAXTER ONCOLOGY are the owners of certain proprietary information, patents and know-how related to Glufosfamide, with all right, title and interest thereto;

WHEREAS BAXTER ONCOLOGY is the licensee of certain patents related to Glufosfamide, owned by BAXTER, with all right, title and interest thereto

WHEREAS THRESHOLD desires to obtain an exclusive license under the patents and proprietary information and know-how belonging or licensed to BAXTER and BAXTER ONCOLOGY relating to the composition referred to in the recital above to develop and market a product for human and animal therapeutic uses primarily in tumor diseases.

NOW THEREFORE FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES INTENDING TO BE LEGALLY BOUND HEREBY, AGREE AS FOLLOWS:

1. Definitions

In this Agreement the following words shall have the following meanings, unless the context otherwise requires:

1.1 "**Affiliate**" means any firm, person or company which controls, is controlled by or is under common control with a Party where "control" means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of such firm, person or company whether through the ownership of voting securities, by contract or otherwise, or the ownership either directly or indirectly of fifty percent (50%) or more of the voting securities of such firm, person or company (or such smaller maximum ownership interest in those countries where foreign ownership is restricted, but not below forty percent (40%).

1.2 "**Animal Studies**" means those studies approved by THRESHOLD and conducted by BAXTER ONCOLOGY pursuant to Clause 6.2, the results of which provide THRESHOLD sufficient information upon which to base a decision as to whether to proceed with development of a Licensed Product.

1.3 "**BAXTER ONCOLOGY Know-How**" means all information in BAXTER ONCOLOGY's or BAXTER's possession or under their control at the date of this Agreement or which comes into their possession or under their control during the term hereof relating to Licensed Product and including, but not limited to, all Manufacturing Know How.

1.4 "**BAXTER ONCOLOGY Patents**" means all Patents and patent applications set forth in Part A of Schedule 1.4

1.5 "**Clinical Trial**" means a clinical trial to demonstrate the safety or efficacy of Licensed Product in the Field.

1.6 "**Commercial Delivery**" means the sale to a Customer of Licensed Product.

1.7 "**CSC**" means the Commercial Steering Committee which shall be appointed and shall operate in accordance with the provisions of Clause 4.

1.8 "**Customer**" means any third party, other than an Affiliate or Sub-Licensee of THRESHOLD to whom THRESHOLD or its Affiliates or Sub-Licensee supplies Licensed Product in a country where such Licensed Product has been approved for sale (including pricing approval where applicable).

1.9 "**Development Data**" means all data, whether raw or analyzed, charts, studies, summaries, analyses, reports, know-how and other information relating to Licensed Product generated by or on behalf of THRESHOLD in performing the Development Plan.

1.10 "**Development Plan**" means the plan directed to the development of Licensed Product to be prepared by THRESHOLD within ninety (90) days of the Effective Date, as updated and/or modified from time to time by THRESHOLD.

1.11 "**Drug Master File**" means the bulk and finished product in final dosage form manufacturing information referenced in a Licensed Product's application for marketing approval in the Territory, in such form as is

acceptable to the Regulatory Agency with whom it has been, or is intended to be, filed.

1.12 "**DSC**" means the Development Steering Committee which shall be appointed and shall operate in accordance with the provisions of Clause 4.

1.13 "**Effective Date**" means the first business day after satisfaction of the condition set forth in Clause 3.1.

1.14 "**FDA**" means the Food and Drug Administration of the United States or any successor thereto.

1.15 "**Field**" means the cure, mitigation, treatment, prevention or diagnosis of (i) cancer in humans and animals, including, but not limited to, benign, pre-malignant, metastatic and malignant tumors and (ii) such other activities as may be permitted to BAXTER and/or BAXTER ONCOLOGY under their agreement with Deutsches Krebsforschungszentrum Stiftung des Offentlichen Rechts, a copy of which is attached hereto as Schedule 1.15

1.16 "**Glufosfamide**" means ß-D-Glucopyranosyl-N,N´-di-(2-chloroethyl)-phosphoric acide diamide.

1.17 "**Improvement**" means any new technique, application, formulation or chemical or biological analog (i.e. metabolite) or derivative developed by or on behalf of a Party under the Licensed Patents or the Licensed Know-How. For the avoidance of doubt the definition of Improvement excludes Development Data.

1.18 "**IND**" means an investigational new drug application relating to a Licensed Product filed with the FDA pursuant to 21 C.F.R. Part 312, or such similar application filed with or submitted to a similar Regulatory Agency in another country, including but not limited to amendments thereto.

1.19 "**Indication**" means pancreatic cancer.

1.20 "**Initiate**" means to administer the first dose of Licensed Product to the first patient in a Clinical Trial.

1.21 "**Licensed Know How**" means the BAXTER ONCOLOGY Know How and the Regulatory Documents.

1.22 "**Licensed Patents**" means the BAXTER ONCOLOGY Patents and Manufacturing Patents.

1.23 "**Licensed Product**" means the product known as Glufosfamide together with its salts, solvates, esters, analogs, mimetics, and chemical and biological derivatives.

1.24 "**Manufacture**" means all activities necessary or required to manufacture the Licensed Product in bulk and finished product forms.

1.25 "**Manufacturing and Supply Agreement**" means an agreement entered into among the Parties in accordance with Clause 2.2 that pertains to the

manufacture of Licensed Product by BAXTER ONCOLOGY for THRESHOLD.

1.26 "**Manufacturing Know How**" means all information in BAXTER's or BAXTER ONCOLOGY's or their Sub-Contractor's possession or under their control at the date of this Agreement or which comes into their possession or under their control during the term hereof relating to the Manufacture of Licensed Product (including but not limited to the identity of any Sub-Contractor). Provided however, that information in Sub-Contractor's possession or under their control is only included in "Manufacturing Know-How" to the extent it is or has to be transferred from Sub-Contractor to BAXTER or BAXTER ONCOLOGY.

1.27 "**Major Market Countries**" means [***]

1.28 "**Manufacturing Patents**" means all Patents and Patent applications set forth in Part B of Schedule 1.4.

1.29 "**NDA**" NDA means a New Drug Application and all supplements filed pursuant to the requirements of the FDA, including all documents, data and other information concerning Licensed Product which are necessary for, or included in, FDA approval to market Licensed Product in the United States of America as more fully defined in 21. C.F.R. §314.5 et seq or such similar application and supplements filed with or submitted to a similar Regulatory Agency in another country.

1.30 "**Net Sales**" means the amount invoiced by THRESHOLD, its Affiliates or Sub-Licensees to Customers for sales of Licensed Product in the Territory less deductions for the following: (i) cash, trade, quantity and volume credits, allowances, discounts and bad debt (any deduction for bad debt shall be not more than one percent (1%) of sales of Licensed Product, and any allowances for amounts written off as bad debt shall be included in Net Sales if later paid); (ii) rebates such as price reductions, rebates to social and welfare systems, charge-backs, government mandated rebates and similar rebates; (iii) excise, sales, use, value added, and all other similar taxes and tariffs and all other similar import/export duties; (iv) invoiced outbound freight and other transportation charges and shipping insurance if any; and (v) allowances or credits for rejections, withdrawals, recalls, and returns. For the avoidance of doubt, the computation of Net Sales shall not include amounts received by THRESHOLD, its Affiliates or Sub-Licensees for the sale of Licensed Product among THRESHOLD, its Affiliates and Sub-Licensees.

1.31 "**New Indication**" means any therapeutic indication within the Field, other than the Indication.

1.32 "**Parties**" means BAXTER, BAXTER ONCOLOGY and THRESHOLD.

1.33 "**Patents**" means a patent or patent application and including any and all divisions, continuations, continuations in part, extensions, substitutions, renewals, registrations, revalidations, re-issues thereof or additions

thereto and including supplementary certificates of protection or similar of or to any patent.

1.34 "**Phase I**" means, with respect to the United States, the first phase of human clinical trials using a limited number of human subjects to gain evidence of the safety and tolerability of a product or compound and information regarding pharmacokinetics and potentially pharmacological activity for such product or compound, which human clinical trials are completed prior to the initiation of Phase II, as described in 21 C.F.R. § 312.21(a), as it may be amended, or, with respect to any other country or jurisdiction, its equivalent in such other country or jurisdiction.

1.35 "**Phase II**" means, with respect to the United States, the second phase of human clinical trials of a product or compound in human subjects to gain evidence of the efficacy in one or more indications and expanded evidence of the safety of a product or compound, as well as an indication of the dosage regimen required, as described in 21 C.F.R.§ 312.21(b), as may be amended, or, with respect to any other country or jurisdiction, its equivalent in such other country or jurisdiction.

1.36 "**Phase III**" means, with respect to the United States, the third phase of human clinical trials of a product or compound which are large-scale, randomized trials to gain evidence of the efficacy and safety in a number of human subjects sufficient to support Product Approval for a product or compound with the FDA, as described in 21 C.F.R. § 312.21(c), as it may be amended, or, with respect to any other country or jurisdiction, its equivalent in such other country or jurisdiction.

1.37 "**Product Approval**" means the grant of all necessary governmental and regulatory approvals, by the FDA, the EMEA or by any other involved Regulatory Agency to sell Licensed Product in the Territory.

1.38 "**Quarter**" means a three (3) month period ending, on the last day of March, June, September or December in any year.

1.39 "**Regulatory Agency**" means, with respect to any particular country, the governmental authority, body, commission, agency or other instrumentality of such country (or the EMEA with respect to the EU), with the primary responsibility for the evaluation or approval of pharmaceutical products before a pharmaceutical product can be tested, marketed, promoted, distributed or sold in such country, including such governmental bodies that have jurisdiction over the pricing and reimbursement of such pharmaceutical product. The term Regulatory Agency includes but is not limited to the FDA.

1.40 "**Regulatory Documents**" means, without limitation, all (i) documents, information, data, and reports, regardless of form, filed with, or submitted to, a Regulatory Agency, (ii) all correspondence to or from a Regulatory Agency, (iii) minutes of all meetings, whether in person or by means of videoconference or teleconference, with a Regulatory Agency or its

representatives, and (iv) all requests, demands, deficiencies, suggestions, reports or other communications by a Regulatory Agency relating to the development, testing, manufacture, safety, efficacy, or approval of Licensed Product.

1.41 "**Royalties**" means the amounts due to BAXTER ONCOLOGY in respect of sales of Licensed Products as described in Clause 3.4 herein.

1.42 "**Sub-Contractor**" means any person, firm or company contracted by BAXTER ONCOLOGY to Manufacture Licensed Product for supply to THRESHOLD.

1.43 "**Sub-Licensee**" means any person, firm or company licensed by THRESHOLD under a Valid Claim to practice the Licensed Patents.

1.44 "**Territory**" means all countries of the world.

1.45 "**Valid Claim**" means a claim in any patent application which has been pending for less than three (3) years from original application or of an issued and unexpired Patent included in Licensed Patents which has not been disallowed or held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through re-issue or disclaimer or otherwise.

1.46 "**Year**" means each consecutive calendar year during the term hereof starting from the calendar year that commences after the first Commercial Delivery.

2. Grant of Licenses

2.1 BAXTER ONCOLOGY and BAXTER hereby grant to THRESHOLD with effect from the Effective Date, subject to the terms and conditions of this Agreement, an exclusive license and/or sublicense, with the right to sublicense, under and using the Licensed Patents and Licensed Know-How (for itself or on its behalf) to develop, make, have made, use, supply, offer for sale, sell, import, export and otherwise distribute Licensed Product in the Territory for use in the Field.

2.2 Notwithstanding the foregoing to the contrary, THRESHOLD shall be entitled to exercise its Clause 2.1 rights in respect of the manufacture of Licensed Products containing Glufosfamide only as follows. BAXTER'S and BAXTER ONCOLOGY's existing supply of Glufosfamide shall be used for the Animal Studies and for any Clinical Trials sponsored by THRESHOLD. THRESHOLD, BAXTER, and BAXTER ONCOLOGY further agree to negotiate diligently and in good faith, from the Effective Date until the date THRESHOLD is required to notify BAXTER ONCOLOGY whether it will proceed with the development of Licensed Product pursuant to Clause 3.2.1, regarding the terms of a Manufacturing

and Supply Agreement under which BAXTER or BAXTER ONCOLOGY shall be THRESHOLD's principal supplier of Glufosfamide for commercial use; provided, however, that: (i) during the term of the Manufacturing and Supply Agreement THRESHOLD shall be free to establish and receive a supply of Licensed Products from a second source, whether that second source be THRESHOLD or a third party; (ii) THRESHOLD shall have the right, without limitation, in the event of a material breach by BAXTER ONCOLOGY under the Manufacturing and Supply Agreement to manufacture Glufosfamide itself or to contract a Third Party to manufacture Glufosfamide for THRESHOLD, and (iii) THRESHOLD shall have the right, without limitation, following expiration or termination of, or failure of the Parties to enter into, the Manufacturing and Supply Agreement to manufacture Glufosfamide itself or to contract a Third Party to manufacture Glufosfamide for THRESHOLD.

2.3 THRESHOLD shall have all right and title to all intellectual property rights, including, but not limited to, patent protection in respect of any Improvements and/or new Licensed Product. Each Party shall promptly disclose in writing to the other Parties all Improvements and new Licensed Product.

3. License Fees, Development Milestone Payments and Royalty Payments

3.1 Upfront Payment

THRESHOLD shall pay to BAXTER ONCOLOGY the non-refundable sum of [***] dollars (US$[***]), within fifteen (15) days following the final signature of this Agreement.

3.2 Development Milestone Payments

THRESHOLD shall make the following one time payments to BAXTER ONCOLOGY:

3.2.1 Within [***] days following the receipt of complete final reports for the Animal Studies, THRESHOLD shall notify BAXTER ONCOLOGY whether it will proceed with the development of Licensed Product. Such notice will be given on or before December 31, 2003; provided that THRESHOLD has had no less than [***] days to review the complete final report. The deadline for such notice shall be extended to the extent necessary to give THRESHOLD [***] days to make its decision. In the event THRESHOLD decides to proceed with development of a Licensed Product, it shall pay BAXTER ONCOLOGY the sum of [***] United States dollars (US$[***]) contemporaneously with such notice, and the data and results of the Animal Studies shall be deemed to be Development Data belonging to THRESHOLD. For the avoidance of doubt such decision triggering the Milestone Payment is the precondition to initiate a Clinical Trial.

3.2.2 Within [***] days following the Initiation of a Phase III Clinical Trial for the Indication, a sum of [***] United States dollars (US$[***]).

3.2.3 Within [***] days of the filing of an application by THRESHOLD to the FDA for Product Approval for use of Licensed Product for the Indication, a sum of [***] United States dollars (US$[***]).

3.2.4 Within [***] days of the grant by the FDA of Product Approval for use of Licensed Product for the Indication the sum of [***] United States dollars (US$[***]).

3.2.5 Within [***] days of the grant by the EMEA of Product Approval in the European Union for use of Licensed Product for the Indication the sum of [***] United States dollars (US$[***]).

3.3 Performance Milestone Payments

THRESHOLD shall pay to BAXTER ONCOLOGY the following one time amounts:

3.3.1 At the end of the first calendar quarter following the Year during which the US annual Net Sales exceed US $[***], the sum of [***] United States dollars (US$[***]).

3.3.2 At the end of the first calendar quarter following the Year during which European annual Net Sales exceed US $[***], the sum of [***] United States dollars (US$[***]).

3.3.3 At the end of the first calendar quarter following the Year during which the worldwide annual Net Sales exceed US$[***], the sum of [***] United States dollars (US$[***]); provided that the sums due to be paid to BAXTER ONCOLOGY pursuant to Clauses 3.3.1 and 3.3.2 have previously become due.

3.4 Royalty Payments

3.4.1 Subject to the terms and conditions herein, THRESHOLD shall pay to BAXTER ONCOLOGY Royalties as follows:

(a) An amount equal to [***] of Net Sales of Licensed Product in those countries where, and only for as long as, compound per se patent protection exists for such Licensed Product; and

(b) An amount equal to [***] of Net Sales of Licensed Product in those countries where, and only for as long as, use patent protection covers the use authorized by the applicable Regulatory Agency for such Licensed Product, but no compound per se patent protection exists in such jurisdictions; and

(c) An amount equal to [***] of Net Sales of Licensed Product in those countries where no patent protection exists.

3.4.2 The Royalties shall be payable on a country by country basis in respect of Net Sales of each Licensed Product made during the longer of:

(a) the period while there exists a Valid Claim of a Licensed Patent; or

(b) [***] years from the date of first Commercial Delivery of said Licensed Product in the Territory.

3.5 THRESHOLD shall not be required to pay multiple Royalties hereunder to BAXTER ONCOLOGY due to any Licensed Product being covered by more than one Valid Claim that is included in the Licensed Patents. Royalties shall be paid at the highest applicable rate set forth in Clause 3.4.1.

3.6 At the end of the period for which any Royalties are due in a given country of the Territory pursuant to this Agreement, THRESHOLD shall have a fully paid, exclusive, royalty free license, with the right to sublicense, under the Licensed Patents and the Licensed Know How in such country of the Territory.

3.7 Royalties shall be payable within [***] days of the end of each Quarter in respect of sales of Licensed Product made during such Quarter by THRESHOLD and its Sublicensees; provided, however, that if THRESHOLD has sublicensed its rights under this Agreement but does not have a royalty report from any Sublicensee sufficiently in advance of the due date for Royalty payments for a Quarter, then THRESHOLD shall (i) provide a good-faith estimate of the Royalties owed on such Sublicensee's sales for such Quarter, but in any event such estimate shall at least equal the Royalties paid during the preceding Quarter; (ii) pay such estimate; and (iii) make a payment or take a credit, as appropriate, in subsequent Royalty payments to the extent such estimated Royalties owed differ from actual Royalties owed for such Sublicensee's sales in such Quarter. Each payment shall be accompanied by a written royalty statement, certified as accurate by THRESHOLD's chief financial officer or chief executive officer, setting forth in reasonable detail the amount of Licensed Products sold and the basis of calculation of the Royalties paid during the Quarter to which the payment pertains.

3.8 In the event that (i) Licensed Product is deemed by a court of competent jurisdiction to infringe a valid claim of a patent owned or controlled by a third party in any given country of the Territory, or (ii) THRESHOLD, its Affiliates or its Sub-Licensees determine, at their reasonable discretion, that it is necessary to pay royalties or other fees to any third party to obtain a license to practice any third party's rights in order to market or develop a Licensed Product in any given country, then in such event, THRESHOLD and its Affiliates may deduct such royalties due to such third parties (or such amounts expended in settlement of such claim, or for securing such rights) from the Royalties otherwise due to BAXTER

ONCOLOGY with respect to Net Sales of such Licensed Product in such country. However, the reduction in the royalty rate shall in no case exceed [***].

3.9 Should a compulsory license be granted to a third party under the applicable laws of any country under the Licensed Patents or Licensed Know-How licensed hereunder to THRESHOLD, the Royalty rate payable hereunder for sales of Licensed Products in such country shall be adjusted to match any lower royalty rate granted to such third party for such country, with respect to the sales of such Licensed Products, and during such periods, for which such third parties sell under the compulsory license articles that compete with the Licensed Products then marketed and sold by THRESHOLD, its Affiliates or Sub-Licensees in that country. In the event that this Clause 3.9 should come to apply to the adjustment of the royalty rate in any given country, THRESHOLD shall be entitled to the benefit of such reduction.

3.10 The Royalty payable on combination products which include another therapeutic compound in addition to Licensed Product, shall be the applicable Royalty rate set forth in Clause 3.4.1 above based on a pro rata portion of Net Sales of combination products in accordance with the following formula:

X = A/B, where

X = the pro rata portion of Net Sales attributable to Licensed Patents and Licensed Know-How licensed hereunder (expressed as a percentage), and

A = the fair market value of the component in the combination product utilizing the licenses granted hereunder, and

B = A plus the fair market value of all other components in the combination product.

The fair market values described above shall be determined by BAXTER ONCOLOGY and THRESHOLD in good faith. In the absence of agreement as to the fair market value of all of the components contained in a combination product, the fair market value of each component shall be determined by arbitration in accordance with the provisions hereof.

3.11 Any amount payable to BAXTER ONCOLOGY in respect of income in a currency other than that of the United States shall be converted into its equivalent in United States currency at the average selling rate for the relevant foreign currency during the Quarter in which such income has been received by THRESHOLD with such rate to be calculated by averaging the rates as published by The Wall Street Journal, New York edition, or such other financial newspaper or reporting system agreed upon by THRESHOLD and BAXTER ONCOLOGY, in effect at the close of

business on the business days occurring in the Quarter. If there exist currency translation restrictions, embargoes, or other currency restrictions that would prevent THRESHOLD, its Affiliates, or Sub-Licensees from converting local currency into United States dollars and remitting the same to BAXTER ONCOLOGY, THRESHOLD, its Affiliates and Sub-Licensees shall be entitled to pay BAXTER ONCOLOGY in the local currency in the country where such restrictions exist.

3.12 THRESHOLD shall provide an annual report to BAXTER ONCOLOGY, that indicates: (i) amounts of Licensed Products sold during the relevant period; (ii) allowable deductions and (iii) payments due pursuant to this Agreement. THRESHOLD shall keep and maintain complete and accurate records of sales of Licensed Products. Such records shall be open upon request of BAXTER ONCOLOGY for a special inspection upon not less than seven (7) days advance written notice not more than once each year, at any reasonable time within two (2) years after the royalty period to which such records relate, by an accounting firm selected by BAXTER ONCOLOGY and reasonably acceptable to THRESHOLD. THRESHOLD shall permit the representative of such accounting firm to have access during ordinary business hours to such records as may be necessary, to determine the accuracy of Net Sales and any report and/or payment made under this Agreement. Such representative shall not disclose to BAXTER ONCOLOGY any information other than the quantity, the calculation and Net Sales of Licensed Products sold and shall otherwise maintain such information in confidence. Said findings shall be maintained in confidence by BAXTER ONCOLOGY. Findings on the accuracy or supposed inaccuracy of such payment shall be disclosed to BAXTER ONCOLOGY by such representative who shall, at the time of reporting his conclusions to BAXTER ONCOLOGY, supply THRESHOLD with a copy of such findings. If the audit shall determine an underpayment of more than five percent (5%) between royalty reported and that actually due, then the reasonable expense of the audit shall be borne by THRESHOLD and otherwise by BAXTER ONCOLOGY.

3.13 THRESHOLD shall withhold and pay to the appropriate authorities in respect of any amount due to BAXTER ONCOLOGY hereunder, any and all withholding taxes, duties, fees and other charges imposed by any taxing authority. In such event, THRESHOLD shall provide BAXTER ONCOLOGY with such evidence of withholding and payment as may be provided by or to taxing authorities.

3.14 Payments due to BAXTER ONCOLOGY pursuant to this Clause 3 not made within 30 (thirty) days after they are due shall bear an interest charge from the due date at the prime rate as determined by CitiBank, N.A. on the due date, plus 3% (three percent).

4. DSC; Development Plan; CSC

4.1 BAXTER ONCOLOGY and THRESHOLD shall establish the DSC and the CSC which shall exist to facilitate active communication between them during the development and commercialization of the Licensed Product, it being further agreed and understood that THRESHOLD shall be responsible for and in control of the research and development and commercialization activities of Licensed Product in the Territory.

4.2 As soon as practicable following the date hereof, BAXTER ONCOLOGY and THRESHOLD shall form the DSC which shall consist of [***] representatives from THRESHOLD and [***] representatives from BAXTER ONCOLOGY.

4.3 THRESHOLD shall prepare and submit a copy of the Development Plan to BAXTER ONCOLOGY's representatives on the DSC within ninety (90) days of the Execution of this Agreement. THRESHOLD shall update and/or modify the Development Plan, as well as the budget thereof, on an annual basis.

4.4 The DSC shall meet to discuss the progress of the Development Plan, the attainment of the objectives of each phase of the development and to share any information related to the development, and commercialization until the formation of the CSC, of the Licensed Product.

4.5 The DSC shall meet at least twice annually and each such meeting shall be held alternately at each of the party's offices. The DSC shall meet on such other occasions as may be reasonably requested by either party throughout each stage of the development of the Licensed Product. THRESHOLD and BAXTER ONCOLOGY shall pay their own costs in attending such meetings and may agree to conduct any such meeting by means of videoconference or teleconference.

4.6 Upon filing of an NDA for the Licensed Product, BAXTER ONCOLOGY and THRESHOLD shall form the CSC which shall consist of [***] representatives from THRESHOLD and [***] representatives from BAXTER ONCOLOGY.

4.7 The CSC shall meet to discuss the worldwide marketing of Licensed Product, the launch of the Licensed Product in the Territory and the supply forecast of Licensed Product requirements for sale in the Territory.

4.8 The CSC shall meet on an annual basis. THRESHOLD and BAXTER ONCOLOGY shall pay their own costs in attending such meetings.

4.9 The activities of the DSC and CSC may be consolidated into one Steering Committee, at any time, upon the mutual agreement of THRESHOLD and BAXTER ONCOLOGY. The DSC shall cease to exist following approval by the FDA of Licensed Product for marketing and sale; provided, however, the DSC shall continue to function thereafter until any mandatory

post-marketing clinical studies, if any, have been completed and the results thereof analyzed and submitted to the FDA.

4.10 BAXTER ONCOLOGY and THRESHOLD shall establish a written agenda not less than seven (7) days in advance of each meeting of the DSC and the CSC. The hosting Party shall be responsible for preparing minutes of each meeting of the DSC and the CSC, which shall not become official until submitted and approved by the DSC or CSC, as the case may be. Each of BAXTER ONCOLOGY and THRESHOLD shall be entitled to bring such of its employees and consultants to meetings of the DSC and the CSC, in addition to its regular members, as it deems appropriate in light of the matters to be discussed.

5. THRESHOLD's Responsibilities

5.1 THRESHOLD shall use its reasonable efforts to undertake the development of the Licensed Product in accordance with the Development Plan and shall diligently perform the work set forth in the Development Plan using reasonable skill and care and in a manner consistent with accepted practices in the pharmaceutical industry.

5.2 THRESHOLD shall pay the costs of preparing and performing activities related to the Development Plan which are or may be reasonably necessary to develop, apply for and obtain Product Approvals for Licensed Product in the Field in the Territory, subject to and without derogating from BAXTER ONCOLOGY's obligations under Section 6 hereinbelow.

5.3 Within [***] of the Execution of the Agreement, THRESHOLD shall Initiate in a country in the Territory a Phase III Clinical Trial of Licensed Product for the Indication, or for another tumor disease indication, subject to the following conditions:

5.3.1 THRESHOLD's receipt from BAXTER ONCOLOGY of the complete chemistry and manufacturing (CMC) file sufficient for regulatory purposes to be incorporated into the IND and NDA applications to be filed with the FDA for Product Approval or access to the Drug Master Files for Licensed Product prepared by BAXTER ONCOLOGY and/or its Sub-Contractors and on file with the FDA; and

5.3.2 effectiveness of the IND application with the FDA for use of Licensed Product for the Indication or alternative indication.

5.4 THRESHOLD shall be responsible for preparing and applying for applications for Product Approvals in the Territory and shall be responsible for the maintenance of all Product Approvals in the Territory and for preparing and applying for applications for, and monitoring all other regulatory approvals relating to Licensed Product. THRESHOLD shall be responsible for deciding in which countries in the Territory such activities shall be conducted.

5.5 All Product Approvals applied for pursuant to Clause 5.4 shall be applied for in the name of THRESHOLD or its Affiliates, contractors or Sub-Licensees.

5.6 THRESHOLD shall use reasonable efforts consistent with its normal business practices to promote and market the Licensed Product in the Major Market Countries in the Territory. Subject to restrictions imposed by applicable law or regulation, if any, upon request of BAXTER ONCOLOGY, THRESHOLD shall mark Licensed Product or promotional materials/accompanying literature to indicate that the Licensed Patents are licensed from BAXTER.

5.7 THRESHOLD, its Affiliates or Sub-Licensees, as the case may be, shall be responsible for the preparation of scientific literature and promotional material relating to Licensed Product and its activities in the Territory in accordance with its normal business practices and quality standards and in accordance with local legal requirements. A draft copy of any such scientific and/or promotional material shall be given to BAXTER ONCOLOGY no less than ten (10) days prior to the distribution thereof for BAXTER ONCOLOGY's approval, which will not be unreasonably, withheld or delayed, unless THRESHOLD is required by law to release such information, in which case it will be exempt from giving BAXTER ONCOLOGY a copy in advance. THRESHOLD will provide BAXTER ONCOLOGY with three (3) final copies of any such materials.

6. BAXTER ONCOLOGY's Responsibilities

6.1 Within thirty (30) days after the Effective Date, BAXTER ONCOLOGY shall provide THRESHOLD with all documentary form or other form of licensed Know How, research and development, clinical and manufacturing data, and Regulatory Documents related to the Licensed Product including, but not limited to, all data resulting from Phase I and Phase II clinical trials of Licensed Product, for the Indication or alternative indications, conducted by or on behalf of BAXTER or BAXTER ONCOLOGY. As further information and/or data related to Licensed Product comes into possession of BAXTER ONCOLOGY it shall forthwith disclose the same to THRESHOLD.

Following execution of this Agreement, BAXTER ONCOLOGY shall provide THRESHOLD access for copying to all written BAXTER ONCOLOGY Know-How, evaluations, memorandum and documentation in its possession relevant to the Licensed Product. BAXTER ONCOLOGY shall use reasonable efforts to provide its personnel time for preparation and transfer of technology (including, but not limited to, manufacturing technology specific to Licensed Product) and BAXTER ONCOLOGY Know-How in BAXTER ONCOLOGY's possession, relating to Licensed Product that is necessary for the development and manufacture of Licensed Product by THRESHOLD or a THRESHOLD Sub-licensee or Subcontractor. Such information shall be specific to Licensed Product and

BAXTER ONCOLOGY shall be under no obligation to transfer general knowledge of development, manufacture, registration or commercialization of this type of product.

BAXTER ONCOLOGY's obligations in accordance with Clause 6.1 shall include, but not be limited to, making employees available for telephone consultations with respect to the transfer of written information and associated documentation relating to pre-clinical and clinical activities, IND, NDA and Manufacture matters.

6.2 BAXTER ONCOLOGY will conduct animal studies to determine dose titration of the combination of Glufosfamide and gemcitabine and one xenograft study with human pancreatic cancer tissue using this combination with changing treatment sequences (Glufosfamide and gemcitabine simultaneously, Glufosfamide then gemcitabine, or gemcitabine first). BAXTER may conduct additional animal studies with other xenograft types as well as a combination study of Glufosfamide with 5-FU. BAXTER will complete such studies and report the results therefrom to THRESHOLD no later than 15 November 2003. During the conduct of the foregoing studies, BAXTER shall keep THRESHOLD informed of the status of such studies and the results thereof on an ongoing basis.

6.3 BAXTER and BAXTER ONCOLOGY shall be responsible for the filing, prosecution and maintenance, at their expense, of all Licensed Patents.

7. Patents

7.1 THRESHOLD may, at its own cost and expense, prepare, file and prosecute new patent applications for the Licensed Product and uses or methods thereof, as it sees fit. Notwithstanding the foregoing, should BAXTER and BAXTER ONCOLOGY decide that they are no longer interested in maintaining or prosecuting a Licensed Patent, BAXTER and BAXTER ONCOLOGY shall assign free of charge such Licensed Patent to THRESHOLD. Upon assignment, such Licensed Patent shall no longer be included in Licensed Patents and THRESHOLD may thereafter maintain and prosecute such Licensed Patent at its expense to the extent that it desires to do so.

7.2 Infringement of Third Party Rights

7.2.1 If the manufacture, use or sale of the Licensed Products using the Licensed Patents and Licensed Know How may constitute an infringement of the rights of a third party in the Territory, each Party shall, as soon as it becomes aware of such possible infringement, notify the other Parties thereof in writing.

7.2.2 The Parties shall after receipt of such notice referred to in Clause 7.2.1 above, discuss the situation and, to the extent necessary, attempt to agree on a course of action in order to

permit THRESHOLD to practice the licenses granted under this Agreement. Such course of action may include (1) obtaining an appropriate license from such third party or (2) contesting any claim or proceedings brought by the third party.

7.2.3 If within [***] the Parties fail to agree upon a course of action, BAXTER ONCOLOGY or BAXTER may decide upon the course of action at its expense in the interest of further development and/or commercialization of Licensed Product, including the negotiation of an appropriate license from such third party, in which event BAXTER ONCOLOGY or BAXTER shall keep THRESHOLD fully informed as to progress of such negotiations or the defense of any suit or claim and shall seek and consider the opinion of THRESHOLD regarding all such matters.

7.2.4 BAXTER ONCOLOGY or BAXTER shall make no settlement of any claims of a third party without the written consent of THRESHOLD, which consent shall not be unreasonably withheld or delayed.

7.2.5 In the event of a final judgment or settlement in any suit brought by a third party or settlement of a claim of a third party against THRESHOLD requiring royalty payments for any other damages to be paid by THRESHOLD, such royalty payments or damages paid by THRESHOLD shall be deducted from Royalties required to be paid to BAXTER.

7.3 Infringement of Licensed Patents and Licensed Know-How

7.3.1 In the event that either party becomes aware of any infringement or suspected infringement of the Licensed Patents or misuse of Licensed Know-How or Development Data, then it shall promptly give notice to the other in writing and:

7.3.2 BAXTER ONCOLOGY and THRESHOLD shall consult within [***] days after one Party gives notice to the other Party of any infringement or suspected infringement to decide what steps shall be taken to prevent or terminate such infringement or misuse and the proportions in which they shall share the cost thereof and any damages and other sums which may be awarded in their favour or against them.

7.3.3 When failing agreement between BAXTER ONCOLOGY and THRESHOLD by the end of the period set forth in Clause 7.3.2, unless such period has been extended by mutual written agreement of BAXTER ONCOLOGY and THRESHOLD, then THRESHOLD may at its own discretion take such action that it may consider necessary and appropriate to terminate or prevent such infringement or misuse and THRESHOLD shall be entitled, subject to all damages and other sums which may be awarded

or recovered against it as a result thereof, to all damages and other sums recovered by it and shall indemnify BAXTER and BAXTER ONCOLOGY against all and any costs, expenses, losses, damages or compensation awarded against or incurred by BAXTER and BAXTER ONCOLOGY as a result of such action being taken.

7.3.4 THRESHOLD shall not make any settlement or compromise without the consent of BAXTER ONCOLOGY, which consent shall not be unreasonably withheld or delayed. If any such settlement includes the grant of a license on terms more favorable than those provided to THRESHOLD hereunder, the terms of THRESHOLD's license shall be automatically modified to embody such more favorable terms for the benefit of THRESHOLD.

7.3.5 If THRESHOLD determines not to institute action to restrain infringement or suspected infringement within [***] after failing agreement by the Parties and notice from BAXTER ONCOLOGY, BAXTER ONCOLOGY shall have the right to institute action at its own expense and on the same terms and conditions as set forth in Clauses 7.3.3 and 7.3.4, with BAXTER ONCOLOGY assuming the rights and duties of THRESHOLD, and THRESHOLD assuming the rights and duties of BAXTER ONCOLOGY, under Clauses 7.3.3 and 7.3.4.

7.3.6 Each Party shall provide all reasonable assistance to the other (including but not limited to the use of its name in or being joined as a party to the proceedings) at the request of the other, in connection with any action to be taken by the other party pursuant to the provisions of this Clause 7.

7.4 Patent Protection Extensions

Each Party agrees to cooperate with the other Parties to secure, where possible, appropriate patent protection extensions and shall inform the other Parties in writing within twenty (20) days after:

7.4.1 the initiation of each Phase of clinical trials of a Licensed Product;

7.4.2 the date of filing of an NDA for a Licensed Product in the United States or its foreign equivalent in a Major Market Country;

7.4.3 the date of obtaining approval of an NDA for a Licensed Product in the United States or its foreign equivalent in a Major Market Country;

7.4.4 the date of the first sale of a Licensed Product in each country of the Territory; and

7.4.5 any events that might be material in connection with a possible extension of the patent protection term.

7.4.6 In this regard, the Parties shall cooperate in filing for and obtaining patent protection extensions and supplementary or complementary protection certificates in any country of the Territory, if and when available, including supplementary protection certificates in European Union ("EU") countries and European Free Trade Area ("EFTA") countries, patent extensions in the United States, and administrative protection, such as so-called pipeline protection in certain countries of the Territory. Such cooperation shall include, without limitation, providing any information, data and documents in a timely manner for the purpose of applying for patent extension and, within one (1) month of receipt, a copy of every marketing authorization for Licensed Product issued by any country providing for patent protection extensions, and in addition, within one (1) month of availability of the document, a copy of the official journal page from each EU or EFTA country giving the marketing approval number and date of authorization for Licensed Product, and a summary of the characteristics of Licensed Product for that country, for the purpose of applying for supplementary protection certificates under EEC (European Economic Community) Directive 1768/92, and providing information and signing of documents as required.

8. Warranty, Liability and Indemnity

8.1 Warranties

BAXTER ONCOLOGY and BAXTER warrant that:

8.1.1 they are free to enter into this Agreement in their own right and that there are no rights exercisable by or obligations owed to any third party which may prevent or restrict them from entering into this Agreement and that the execution and delivery of this Agreement and performance hereunder by them has been duly authorized by all necessary corporate action;

8.1.2 the Licensed Patents and the Licensed Know-How comprise all of the intellectual property owned or controlled by BAXTER and BAXTER ONCOLOGY related to Licensed Products;

8.1.3 BAXTER ONCOLOGY has disclosed or will disclose according to Clause 6 to THRESHOLD all Licensed Know-How under its or its licensor's control or in its or licensor's possession and it has not disclosed to any third party other than under written obligation of confidence and non-use the Licensed Patents or Licensed Know-How or the subject matter thereof;

8.1.4 so far as they are aware having made due and proper enquiry and subject to the filing of a certificate disclaiming Glufosfamide from the scope of the claims of US Patent No. 6489302, the Licensed Patents are or will be when granted valid and that the manufacture use, supply, sale, import or export of Licensed Product for the Field or for any other indication will not infringe the rights of any third party in the Territory, and in addition to any other right or remedy that THRESHOLD may have under this Agreement or law, THRESHOLD shall have the right to terminate this Agreement in the event that a certificate of correction disclaiming Glufosfamide from the scope of the claims of US Patent No. 6489302 assigned to the Deutsches Krebsforschungszentrum Stiftung des Offentlichen Rechts, 69120 Heidelberg, DE, has not been filed with the US Patent Office by the patent owner on or before November 30, 2003 and, in the event of such termination, BAXTER ONCOLOGY shall pay THRESHOLD the sum of [***] U.S. dollars ($[***]) as a termination fee and as liquidated damages for such termination; the Parties agree to take any steps, if and as far as necessary, with regard to the above patent family in close cooperation;

8.1.5 so far as they are aware having made due and proper enquiry, there is no know-how or other information owned or controlled by BAXTER, BAXTER ONCOLOGY, their licensor or their Sub-Contractors necessary for the development, use, manufacture, supply or sale of Licensed Products other than the Licensed Know How, and that BAXTER is the absolute beneficial and legal owner of the Licensed Patents which comprise all the intellectual property possessed or controlled by them relating to the Licensed Product, its uses, and manufacture, and BAXTER and BAXTER ONCOLOGY are the beneficial and legal owners of the Licensed Know-How, both the Licensed Patents and the Licensed Know-How are free and clear of all liens, charges and encumbrances, and they are entitled to grant all of the rights granted or agreed to be granted hereunder;

8.1.6 they have not granted and will not grant to any person or entity, other than THRESHOLD, any right, license or privilege with respect to the Licensed Patents and Licensed Know How for use in the Territory;

8.1.7 BAXTER and BAXTER ONCOLOGY have disclosed to THRESHOLD all information in their possession relating to the Licensed Product and in which the novelty, validity or sufficiency of the Licensed Patents and any claim made therein has been challenged or disallowed;

8.1.8 they know of no information or data which will or may adversely affect or prevent the development, manufacture or use of

Licensed Product in the Field in the Territory or render the use of Licensed Product for use by way of administration to humans unsafe or lacking in efficacy; and

8.1.9 none of BAXTER, BAXTER ONCOLOGY or their Affiliates, Sublicensees or Sub-Contractors shall utilize the Licensed Patents or Licensed Know How, or develop Glufosfamide for use in the Territory.

8.2 Product Liability

8.2.1 THRESHOLD shall assume all third party liabilities arising from the, use, offer for sale or supply, sale or supply by through or on behalf of THRESHOLD or its Affiliates or Sub-Licensees of Licensed Products (and related materials) including without limitation all claims based upon product liability laws, except for liabilities and claims arising from the breach of the terms of the Agreement by BAXTER ONCOLOGY or the negligence of BAXTER ONCOLOGY or its Affiliates for which BAXTER ONCOLOGY and BAXTER shall assume all liabilities. To the extent claims based upon product liability laws arise from instructions or specifications of THRESHOLD for the Manufacture of Licensed Products that are not based on instructions or specifications provided by BAXTER or BAXTER ONCOLOGY, THRESHOLD shall assume all related liabilities.

8.2.2 THRESHOLD shall defend, indemnify and hold harmless BAXTER, BAXTER ONCOLOGY, their Sub-Contractor(s), their Affiliates, their directors, officers, employees and consultants and those of their Affiliates and Sub-Contractor(s) from and against any and all claims, demands, losses, damages and/or expenses (including without limitation reasonable legal fees) arising from or in connection with any use by, sale to third parties or supply of third parties by THRESHOLD or its Affiliates or Sub-Licensees of Licensed Products in the Territory except to the extent that any such claims, demands, losses, damages and/or expenses result from the negligence of BAXTER, BAXTER ONCOLOGY or its Affiliates or the breach by BAXTER ONCOLOGY of the terms of this Agreement. To the extent third party claims arise from instructions or specifications of THRESHOLD for the Manufacture of Licensed Products that are not based on instructions or specifications provided by BAXTER or BAXTER ONCOLOGY, THRESHOLD shall defend, indemnify and hold harmless BAXTER, BAXTER ONCOLOGY, their Sub-Contractor(s), their Affiliates, their directors, officers, employees and consultants and those of their Affiliates and Sub-Contractor(s) from and against any and all such claims.

8.2.3 BAXTER ONCOLOGY and BAXTER shall defend, indemnify and hold harmless THRESHOLD, its Affiliates, its Sub-Licensees, its directors, officers, employees and consultants and those of its Affiliates and Sub-Licensees from and against any and all claims, demands, losses, damages and/or expenses (including without limitation reasonable legal fees) arising from any use by, sale to or supply by THRESHOLD or its Affiliates or Sub-Licensees of Licensed Products in the Territory to the extent that any such claims, demands, losses, damages and/or expenses result from the negligence of BAXTER ONCOLOGY or its Affiliates or the breach by BAXTER ONCOLOGY or BAXTER of the terms of this Agreement.

8.2.4 Within thirty (30) days of receipt of written request for indemnification, to be provided promptly upon receipt of a claim, the party from whom indemnification is sought shall advise the other whether it will provide the requested indemnification. The indemnified party shall permit the indemnifying party, at the indemnifying party's expense, to assume the complete defense of any claims with a full authority to conduct such defense and to settle or otherwise dispose of the claims as provided below. The indemnified party will fully co-operate in such defense and shall provide reasonable assistance necessary to enable the indemnifying party to defend such claims. The indemnified party may retain separate co-counsel, at its sole cost and expense and participate in the defense of the claim. The indemnifying party will not, except with the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which provides for any relief other than the payment of monetary damage and which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the indemnified party a release from all liability in respect thereof. The indemnifying party shall not be responsible for or bound by any settlement made by the indemnified party without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld or denied. To the extent that any claim for indemnification involves an action wherein counts or claims are alleged which are attributed or attributable to the indemnified party, following settlement or termination of said action, the Parties agree to apportion their respective indemnification obligations based upon their attributed fault in the event of jury, court or other alternate dispute resolution mechanism or based upon good faith negotiations among the Parties in the event of a settlement.

8.2.5 THRESHOLD and BAXTER ONCOLOGY shall each use its reasonable efforts to obtain and maintain in force at all times during the term hereof third party liability insurance in respect of

the risks in respect of which it is providing indemnity hereunder with a reputable insurance carrier or by self-insurance. THRESHOLD and BAXTER ONCOLOGY shall each use its reasonable endeavors to name the other as named insured under its policy of insurance as aforesaid and provide a copy thereof upon request.

9. BAXTER ONCOLOGY Improvements

9.1 BAXTER ONCOLOGY and BAXTER shall promptly disclose in writing to THRESHOLD, free of charge all new techniques, formulations, applications or chemical or biological analogs (i.e. metabolites), or derivatives of Licensed Product developed or acquired by BAXTER ONCOLOGY or BAXTER ("BAXTER ONCOLOGY Improvements").

9.2 Where THRESHOLD wishes to use a BAXTER ONCOLOGY Improvement for Licensed Products it shall notify BAXTER ONCOLOGY or BAXTER, as the case may be, of its wish within 90 (ninety) days of being informed thereof and shall have the right to receive an exclusive, royalty-free license to use BAXTER ONCOLOGY Improvements developed or acquired by BAXTER ONCOLOGY in the Territory in respect of Licensed Products in the Field in accordance with the provisions of this Agreement, together with the right to grant sub-licenses thereunder in accordance with the terms hereof;

10. Confidentiality

10.1 BAXTER, BAXTER ONCOLOGY and THRESHOLD undertake to each other to keep, and shall procure that their respective Affiliates, Sub-Licensees, employees, directors, officers, consultants and contractors (including those of any Affiliate) shall keep, confidential all information marked "confidential" received from each other during or in anticipation of – but after the effective date of the confidentiality agreement between the parties dated October 4, 2002 – this Agreement however obtained and in whatever form (the "Confidential Information") provided that Confidential Information shall not include the following:

10.1.1 information which at the time of disclosure by one party to the other is in the public domain;

10.1.2 information which after disclosure by one party to the other becomes part of the public domain by publication except by breach of this Agreement;

10.1.3 information which the receiving party can establish by competent proof was already in its possession at the time of its receipt and was not acquired directly or indirectly from the other party; or

10.1.4 information received from third parties who were lawfully entitled to disclose such information.

10.2 Any Confidential Information received from the other party shall not be disclosed or used for any purpose other than as provided or anticipated under this Agreement.

10.3 The confidentiality and non-use obligations contained in this Agreement shall continue for the duration of this Agreement and for a period of ten (10) years after termination or expiry of this Agreement.

10.4 The provisions of this Clause 10 shall in no event prevent THRESHOLD from disclosing any Licensed Know How to regulatory authorities or other governmental agencies in support of any application to conduct Clinical Trials or for regulatory approvals or any amendments thereof for Licensed Products in accordance with the provisions of this Agreement, or to prospective investors or to prospective sub-licensees who are bound by an obligation of confidentiality, or in general whenever required to disclose such information under any applicable law or regulation.

10.4.1 Where one party intends to make any public release of scientific data or other information relating to Licensed Products it shall give the other party thirty (30) days prior notice thereof together with the text of any such release. Prior to making any such release, the party intending the release shall modify the context thereof to take account of any reasonable comments made by the other party. Notwithstanding the foregoing, BAXTER ONCOLOGY shall not make any such release where in the reasonable opinion of THRESHOLD to do so would adversely affect the development of Licensed Product, its commercial value or any intellectual property (including Development Data relating thereto).

11. Termination

11.1 Termination by Either Party

Either Party may terminate this Agreement forthwith by notice in writing given at any time if the other party is in material breach of any of its obligations hereunder except in the case of a material breach capable of remedy within sixty (60) days, where the material breach has been remedied within such sixty (60) days of the defaulting party receiving notice specifying the material breach and requiring its remedy. Notwithstanding the foregoing, Clause 11.2, and not this Clause 11.1, shall govern terminations under the circumstances described therein.

A material breach of this Agreement is (1) a willful act or omission by the party in breach that would deprive the other party of a major part of the value of what it had contracted for and for which damages are not an adequate remedy; or (2) the non-payment of money within thirty (30) days of the date upon which it is due and payable hereunder.

11.2 BAXTER ONCOLOGY shall in addition have the right to terminate this Agreement:

11.2.1 If THRESHOLD materially breaches its obligation to perform its obligations as set forth in Clause 5 and such breach remains uncured for a period of ninety (90) days after the delivery of notice of such breach to THRESHOLD;

11.2.2 THRESHOLD discontinues its development and commercialization activities for a continuous period of twelve (12) months in a manner that is inconsistent with the then current Development Plan, and such breach remains uncured for a period of ninety (90) days after the delivery of notice of such breach to THRESHOLD;

11.2.3 Forthwith by notice in writing given at any time if an order is made or a resolution is passed for the winding up or insolvency of THRESHOLD (other than voluntarily for the purposes of solvent amalgamation or reconstruction) or an order is made for the appointment of an administrator to manage the other party's affairs, business and property or if a receiver (which expression shall include an administrative receiver) is appointed of any of THRESHOLD's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or if a voluntary arrangement is proposed in respect of THRESHOLD or if THRESHOLD takes or suffers any similar or analogous action in consequence of debt, unless any such action is withdrawn or set aside within 60 (sixty) days. The licenses granted pursuant to this Agreement shall be deemed to be licenses of "Intellectual Property" for purposes of Section 365(n) of the U.S. Bankruptcy Code.

11.3 THRESHOLD shall have the right to terminate this Agreement, (and the underlying licenses) by notice in writing given at any time upon 60 (sixty) days notice to BAXTER ONCOLOGY with or without cause.

12. Consequences Of Termination

12.1 Upon termination of this Agreement by BAXTER ONCOLOGY or, without cause, by THRESHOLD:

12.1.1 Licenses Terminated

Subject to other provisions of this Clause the licenses granted under Clause 2 shall terminate automatically and THRESHOLD shall procure that its Affiliates and Sub-Licensees shall immediately stop all activities licensed hereunder except that (i) any Sub-licensee of THRESHOLD that is not in default of its obligations under its sub-license shall be entitled to continue its sub-license in full force and effect subject to the provisions of this Agreement to the benefit of BAXTER and BAXTER ONCOLOGY, and (ii) THRESHOLD, its Affiliates and

Sub-Licensees shall be permitted to offer for sale and sell and supply remaining stocks of Licensed Products in their possession at the date of termination or delivered thereafter as quickly as reasonably possible and complete deliveries on contracts in force at that date subject to the payment of license fees, milestone payments and royalties under and in accordance with the provisions of Clause 3.

12.1.2 Payment Due

THRESHOLD shall make all outstanding license fees, milestone and Royalty payments due hereunder to BAXTER ONCOLOGY.

12.1.3 Continuing Provisions

The following provisions of this Agreement shall continue in full force and effect following termination: this Clause 12 and Clauses 1, 7.2 (but only for pre-termination infringement), 7.3 (but only for pre-termination infringement), 8, 10, 14 and 15. Termination of this Agreement for any reason does not relieve the Parties of any obligation accruing prior to the effective date of the termination, including the obligation to make the payments set forth in Clause 3.

12.1.4 Return of Know-How

Subject to the other provisions of this Clause 12, THRESHOLD shall return to BAXTER ONCOLOGY all Licensed Know-How and documents given to THRESHOLD by BAXTER ONCOLOGY pursuant to this Agreement in its possession or the possession of its Affiliates.

12.1.5 Use of Development Data

Subject to the other provisions of this Clause 12, THRESHOLD grants to BAXTER ONCOLOGY the right to use Development Data (where it is free to do so) and transfer to BAXTER ONCOLOGY or its designee(s) all Product Approvals in its name.

12.1.6 Third Party Agreements

BAXTER ONCOLOGY or BAXTER agrees to recognize THRESHOLD's Sub-Licensees as its direct licensees following a termination of this Agreement by BAXTER ONCOLOGY provided that (i) such Sub-Licensees are in compliance with the terms of their sublicenses, (ii) BAXTER or BAXTER ONCOLOGY would not be required to undertake obligations in excess of those undertaken pursuant to this Agreement, and (iii) such Sub-Licensees agree with having BAXTER or BAXTER ONCOLOGY as direct Licensor. Notwithstanding the foregoing to the contrary and as an alternative thereto, BAXTER

ONCOLOGY shall use reasonable efforts consistent with the terms of this Agreement as reasonable under the circumstances to assist THRESHOLD, at THRESHOLD's request, in discharging THRESHOLD´s obligations in full under all agreements between THRESHOLD and its Sub-Licensees or other third parties until each can be terminated by THRESHOLD in accordance with its terms and without liability to THRESHOLD.

12.2 Rights and Remedies for Breach

Any rights or remedies of either party arising from any breach shall continue to be enforceable unless previously waived in writing, including without limitation either Party's rights to recover damages for breach of this Agreement by the other Party.

13. Force Majeure

13.1 Neither party shall terminate this Agreement or be liable to the other under this Agreement for loss or damages attributable to any act of God, earthquake, flood, fire, explosion, strike, lockout, labor dispute, casualty or accident, war, revolution, civil commotion, terrorism, act of public enemies, blockage or embargo, injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or subdivision, authority (including, without limitation, regulatory authorities) or representatives of any such government, or any other cause beyond the reasonable control of such party, if the party affected shall give prompt notice of any such cause to the other party. The party giving such notice shall thereupon be excused from such of its obligations hereunder for so long as it is so disabled during, but no longer than the existence of such cause.

13.2 If such cause continues unabated for a period of at least 90 (ninety) days, the Parties will meet to discuss what, if any, modifications should be made to this Agreement as a consequence of such Force Majeure.

14. Miscellaneous

14.1 Performance by Affiliates, Sub-Licensees and Sub-Contractors

The Parties may perform some or all of their obligations under this Agreement through their Affiliates, Sub-Licensees or Sub-Contractors and third parties provided that each party shall remain solely responsible for and be guarantor of the performance by its Affiliates, Sub-Licensees or Sub-Contractors and third parties and procure that its Affiliates, Sub-Licensees or Sub-Contractors and such third parties comply fully with the provision of this Agreement in connection with such performance.

14.2 Severance

If any provision of this Agreement is held to be invalid or inapplicable by a court of competent jurisdiction the remaining provisions will continue in full force and the Parties will make such amendments to this Agreement by the addition or deletion of wording as appropriate to remove the invalid or unenforceable part of such provision but otherwise achieve, to the maximum extent permissible, the economic, legal and commercial objectives of the original provision.

14.3 Waiver

Failure or delay by either party in exercising or enforcing any right or remedy under this Agreement in whole or in part shall not be deemed a waiver thereof or prevent the subsequent exercise of that or any other rights or remedy.

14.4 Interpretation

The headings in this Agreement are for convenience only and shall not affect its interpretation. References to the singular include the plural and vice versa. References to persons include companies, partnerships and all other forms of body corporate or unincorporated and references to recitals, clauses and schedules are references to Recitals, Clauses or Schedules to this Agreement.

14.5 Language

All documents delivered under this Agreement by BAXTER or BAXTER ONCOLOGY to THRESHOLD, if maintained or prepared in other than the English language, shall be accompanied by English translations thereof. All communications between the parties shall be in English.

14.6 Assignment

14.6.1 Subject to Clauses 14.6.2, 14.6.3 and 14.6.4 neither BAXTER, BAXTER ONCOLOGY nor THRESHOLD shall assign, transfer, sub-license, sub-contract, mortgage, charge or otherwise make over to any third party any of its rights or obligations under this Agreement or the Licensed Patents or BAXTER ONCOLOGY Know-How without the prior written consent of the other party, except to an Affiliate or a party acquiring all or substantially all of the business of the assigning Party to which this Agreement relates or to a party merging with one of the Parties. Prior to any such permitted assignment the Party wishing to effect the transaction shall use reasonable efforts to procure that the third party concerned covenants directly with the other Party to this Agreement to comply with all the provisions of this Agreement, which shall be binding on it as the successor and assign of such Party.

14.6.2 THRESHOLD may grant any sub-license or sub-contract of its rights or obligations hereunder without the prior written consent of BAXTER or BAXTER ONCOLOGY and shall notify BAXTER ONCOLOGY of the grant of any sub-contract or sub-license and provide BAXTER ONCOLOGY with a redacted summary of the terms thereof as soon as reasonably practicable following such grant. Subject to receipt of a confidentiality undertaking THRESHOLD shall grant to an independent accountant (acceptable to BAXTER ONCOLOGY) a right to inspect such agreements for the purpose of verifying the calculation of sums to be paid by THRESHOLD to BAXTER ONCOLOGY hereunder. The grant of any sub-license by THRESHOLD shall not relieve THRESHOLD of any of its obligations hereunder and THRESHOLD shall incorporate within the terms of any such agreement rights and obligations consistent with the rights and obligations granted hereunder and including without limitation those as to confidentiality and THRESHOLD shall procure the performance of any sub-license by its Sub-Licensee. Where royalties are payable by any Sub-Licensee, THRESHOLD shall account for royalties on sales and supply of Licensed Products by Sub-Licensees of THRESHOLD in the same manner and upon the same terms as set forth herein and procure for BAXTER ONCOLOGY rights and access to facilities for verifying such royalties. Where THRESHOLD grants any sub-license the term THRESHOLD used in this license shall be deemed to include a reference to Sub-Licensees of THRESHOLD.

14.6.3 Without derogating from any of THRESHOLD's rights hereunder, in any event that BAXTER ONCOLOGY sub-contracts the Manufacture of Licensed Product, other than to THRESHOLD, it shall not be relieved of its obligations hereunder and BAXTER ONCOLOGY shall procure the performance by its Sub-Contractor of any such agreement and any reference to BAXTER ONCOLOGY herein shall with regard to such Manufacture be deemed to include a reference to such Sub-Contractor. BAXTER ONCOLOGY shall notify THRESHOLD of the appointment of any Sub-Contractor and provide a summary of the terms thereof (other than financial terms) as soon as reasonably practicable following such appointment.

14.7 No Agency

Except as expressly stated in this Agreement, neither party shall act or describe itself as the agent of the other nor shall it make, or represent that it has authority to make, any commitments on the other's behalf.

14.8 Notices

14.8.1 Any notice or other document given under this Agreement shall be in writing in the English language and shall be given by hand or sent by prepaid airmail, by facsimile transmission or e-mail to the address of the receiving party as set out in Clauses 14.8.3 and 14.8.4 below unless a different address or facsimile number has been notified to the other in writing for this purpose.

14.8.2 Each such notice or document shall:

(a) if sent by hand, be deemed to have been given when delivered at the relevant address;

(b) if sent by prepaid airmail, be deemed to have been given 7 (seven) days after posting; and

(c) if sent by facsimile transmission or e-mail be deemed to have been given when transmitted provided that a confirmatory copy of such facsimile transmission or e-mail shall have been sent by prepaid first class mail within 24 (twenty-four) hours of such transmission.

14.8.3 BAXTER and BAXTER ONCOLOGY's address for service of notices and other documents shall be:

BAXTER ONCOLOGY GmbH
Daimlerstrasse 40
60314 Frankfurt
Germany

For the Attention of: Geschaeftsfuehrung

With a copy to:
BAXTER Deutschland GmbH
Legal Department
Edisonstr. 4
D-85716 Unterschleissheim
Germany

14.8.4 THRESHOLD's address for service of notices and other documents shall be:

THRESHOLD PHARMACEUTICALS, INC.
951 Gateway Boulevard, Suite 3A
South San Francisco, CA 94080
United States of America
For the Attention of: The Chief Executive Officer

With a copy to:

Heller Ehrman White & McAuliffe, LLP
275 Middlefield Road
Menlo Park, CA 94025
For the Attention of: Sarah O'Dowd

14.9 Entire Agreement

14.9.1 This Agreement shall constitute the entire agreement and understanding of the Parties relating to the subject matter of this Agreement and shall supersede all prior oral or written agreements, understandings or arrangements between them relating to such subjects.

14.9.2 No change or addition may be made to this Agreement except in writing signed by the duly authorised representatives of the Parties.

14.9.3 Nothing in this Clause 14.9 shall operate to:

(a) exclude any provision implied into this Agreement by law and which may not be excluded by law; or

(b) limit or exclude any liability, right or remedy to a greater extent than is permissible under law.

14.10 Compliance with Local Requirements

If in any country the effect of any provision(s) of this Agreement or the absence from this Agreement of any provision(s) would be to prejudice the Licensed Patents or any remedy under the Licensed Patents, the Parties will make such amendments to this Agreement and execute such further agreements and documents limited to that part of the Territory which falls under such jurisdiction as may be necessary to remove such prejudicial effects.

14.11 Publicity

The Parties may jointly agree to make a press release within three (3) months following the execution of this Agreement. Thereafter, Threshold shall be free, in its sole discretion, and have the exclusive right to originate any publicity, news release, or public announcement concerning Licensed Products, provided Threshold (i) provides BAXTER ONCOLOGY two (2) days' advance written notice of the publicity, news release, or public announcement together with its content and gives due consideration to any comments provided by BAXTER ONCOLOGY within one (1) day thereof; and (ii) does not use the name of BAXTER or BAXTER ONCOLOGY without the express, advance written consent of BAXTER or BAXTER ONCOLOGY, respectively, other than to state that the Licensed Product is "licensed to Threshold Pharmaceuticals, Inc., by Baxter Oncology." Otherwise, in the absence of specific agreement

between the Parties, which agreement shall not be unreasonably withheld or delayed: (i) neither Party shall originate any publicity, news release or public announcement, written or oral, whether to the public or press, relating to financial provisions of this Agreement or to any amendment thereof save only such announcement as in the opinion of counsel for the Party making such announcement is required by law, regulation, or the rules of any stock exchange to be made, (ii) any such announcements shall be factual and as brief as possible, and (iii) if a Party decides to make such announcement, it will give the other Party two (2) days advance written notice of the text of the announcement so that the other Party will have an opportunity to comment upon the announcement. In addition, THRESHOLD may provide information concerning financial provisions to stockholders, executive management, and prospective sublicensees and investors. THRESHOLD may also originate, in its discretion, publicity, news releases, or public announcements concerning Licensed Product other than, except as set forth above, financial information.

14.12 Notification to European Commission and Compliance with Hart Scott Rodino

The Parties shall co-operate fully and shall individually and collectively use all reasonable endeavours to procure any governmental or regulatory approvals with regard to applicable anti-trust and competition law as may be necessary or advisable in connection with the conclusion and/or implementation of this Agreement are obtained as soon as possible. BAXTER ONCOLOGY will pay the costs of any filing fees required to be paid in connection with such submissions or approvals.

15. Arbitration; Governing Law

15.1 The construction, validity and performance of this Agreement shall be governed in all respects by the laws of the State of California without taking into consideration any of its conflict of laws provisions.

15.2 The Parties will attempt in good faith to resolve any dispute, controversy or claim arising out of or relating to the interpretation, performance or enforceability of this Agreement promptly by negotiation between executives of the Parties. In the event that such negotiations do not result in a mutually acceptable resolution, the Parties agree to consider other dispute resolution mechanisms including mediation and arbitration. In the event that the Parties fail to agree on a mutually acceptable solution within a period of thirty (30) business days, any such dispute shall be submitted to binding arbitration.

15.3 Such arbitration shall be conducted in accordance with the American Arbitration Association. Notwithstanding those rules, the following

provisions shall in any event apply to any issue submitted for arbitration hereunder:

15.3.1 The arbitration shall be conducted by a panel of three (3) neutral arbitrators ("Panel"). One (1) arbitrator shall be appointed by each Party and the third member shall be appointed by the two (2) arbitrators appointed by the Parties. Each Party will select an arbitrator within fifteen (15) business days following the demand for arbitration. The two (2) arbitrators selected by the Parties will appoint the third arbitrator within ten (10) days following their appointment. Notwithstanding the above and in the interest of obtaining a judgment within the shortest possible period in connection with certain bona fide disputes or technical or developmental matters that require referral to independent experts, the Parties may agree to appoint only one (1) single neutral arbitrator selected in agreement by both Parties.

15.3.2 The language to be used in the arbitration shall be English.

15.3.3 Any arbitrator selected by the Parties may be of any nationality, and need not be a lawyer or hold any other professional status or membership but will be selected on the basis of his or her qualifications and expertise with respect to the matter under dispute.

15.3.4 The arbitration shall be held in New York, New York.

15.3.5 The specific pleading schedule for each proceeding shall be determined by the Parties in consultation with the Panel within fifteen (15) business days following the selection of the arbitrators.

15.3.6 Unless the Parties otherwise agree at the time a particular issue is submitted for arbitration, the Panel shall be required as a condition to their engagement to agree to render a decision within thirty (30) days of the date on which the record in the proceeding is completed, but in no case more than one hundred and twenty (120) days after the date of their engagement. The time period for cure specified in Clause 11 shall be suspended upon institution of arbitration until completion of such arbitration.

15.3.7 The Parties shall use their best efforts to schedule and make their submissions, and to take all other necessary actions in connection with the proceeding, at a time and in a manner which will permit the Panel to render their decision in accordance with the schedule set forth herein.

15.3.8 All communications with the arbitrator(s) during the proceeding shall be made in writing, with a copy thereof delivered simultaneously to the other Party to the proceeding, or if made

orally, made only in the presence of the other Party to the proceeding or its representative.

15.3.9 All decisions by the Panel shall be rendered by majority vote. The arbitration award or order shall be rendered in writing and shall be final and binding upon the Parties. The arbitrator(s) shall establish and enforce appropriate rules to ensure that the arbitration proceedings, including the decisions, are kept confidential and that all confidential and/or proprietary information of the Parties is kept confidential and is used for no purpose other than for such arbitration proceedings.

15.3.10 Judgment on any order or award shall be entered by any court of competent jurisdiction.

15.3.11 Each Party shall bear its own expenses and attorney's fees in connection with the arbitration.

15.3.12 The fees and expenses of the arbitrator(s) shall be equally shared except that if, in the opinion of the arbitrators, any claim by a Party hereto or any defense or objection thereto by the other Party was unreasonable and frivolous, the arbitrators may in their discretion assess as part of the award all or any part of the arbitration expenses of the other Party (including reasonable attorney's fees) and expenses of the arbitrators against the Party raising such unreasonable and frivolous claim, defense or objection.

In Witness Whereof the duly authorized representatives of the Parties have executed this Agreement the day and year written below

Date: July 29, 2003

/s/ Phillip Saame

/s/ Bernhard Kutscher

Signed by Phillip Saame & Bernhard Kutscher
For and on behalf of
BAXTER ONCOLOGY GmbH

Date: July 31, 2003

/s/ Jan Stern Reed

Signed by Jan Stern Reed
For and on behalf of
BAXTER International Inc.

Date: August 5, 2003

/s/ George F. Tidmarsh

Signed by George F. Tidmarsh
For and on behalf of
THRESHOLD Pharmaceuticals Inc.

Schedules

Schedule 1.4: Licensed Patents:
Part A Baxter Oncology Patents
Part B Manufacturing Patents

Schedule 1.15: License Grant from DKFZ

SCHEDULE 1.4

Part A: Baxter Oncology Patents

Patents based on German Application P 38 35 772.0.

Title: “Antitumor Saccharide Conjugates”, covering molecule, production and medical use

1.	Patent No:	EP 369 182	
2.	Patent No:	AT 369 182	
3.	Patent No:	BE 369 182	
4.	Patent No:	CA 2 001 129	
5.	Patent No:	CH 369 182	
6.	Patent No:	DE 369 182	
7.	Patent No:	DK 170 422	
8.	Applic. No:	DK 1170/93	Notice of allowance received
9.	Patent No:	ES 369 182	
10.	Patent No:	FI 95 268	
11.	Patent No:	FR 369 182	
12.	Patent No:	GB 369 182	
13.	Patent No:	GR 369 182	
14.	Patent No:	HK 1574/1995	
15.	Patent No:	HU 206 124	
16.	Patent No:	IE 67 529	
17.	Patent No:	IT 369 182	
18.	Patent No:	JP 2 518 739	
19.	Patent No:	JP 3 056 408	
20.	Patent No:	LU 369 182	
21.	Patent No:	NL 369 182	
22.	Patent No:	NO 173 548	
23.	Patent No:	PT 92 034	
24.	Patent No:	SE 369 182	
25.	Patent No:	SG 95 913	
26.	Patent No:	US 5 622 936	

Part B. Patent covering production

Title: “Verfahren zur Herstellung von Tetrabenzylglucose” (Procedure for the production of Tetrabenzylglucose)

27. Patent No: DE 195 34 366

Schedule 1.15

[***]

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*CERTAIN INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS

Exclusive License Agreement

This exclusive license agreement (the "Agreement") is by and between Threshold Pharmaceuticals, Inc., a California corporation having an address at 849 Mitten Road, Suite 104, Burlingame, CA 94010 ("Licensee"), and Dr. Theodore J. Lampidis, residing at 6995 South West 67th Ave., Miami, FL 33143, and Dr. Waldemar Priebe, residing at 4239 Emory St., Houston, TX 77005 (Dr. Lampidis and Dr. Priebe are collectively referred to herein as "Licensor"), and has an effective date of 11 November 2002 (the "Effective Date").

Whereas Licensee desires to obtain an exclusive license to PCT patent application No. US01/07173, entitled "Manipulation of Oxidative Phosphorylation for Hypersensitizing Tumor Cells to Glycolytic Inhibitors", all of its U.S. counterpart and priority applications, and all U.S. and foreign patents and patent applications claiming priority to any of the foregoing (the "Licensed Subject Matter"); and

Whereas Licensor desires to grant Licensee an exclusive license to the Licensed Subject Matter on the terms and conditions set forth in this Agreement;

Now, therefore, Licensor and Licensee agree as follows.

Licensor hereby grants to Licensee an exclusive license, with the right to sublicense (through one or more tiers of sublicensees without consent), under all right, title and interest in and to the Licensed Subject Matter to research, develop, make, have made, use, have used, sell, have sold, offer for sale, have offered for sale, import and have imported products and services of any kind or nature throughout the world throughout the life of the Licensed Subject Matter and the exclusive right to prosecute infringement of the Licensed Subject Matter and retain all recoveries resulting from such prosecution.

Licensee grants Dr. Theodore J. Lampidis a non-exclusive, non-transferable sublicense to the Licensed Subject Matter to conduct academic research in the field of identifying new cancer therapies. Dr. Lampidis shall be free to publish the results of his research in exercise of such license, and shall give Licensee for its review a copy of any such publication that describes practice of an invention claimed in the Licensed Subject Matter at least thirty (30) days prior to publication. For clarity, such license to Dr. Lampidis explicitly excludes the right to develop or commercialize any product or service itself or the method of manufacture or use of which is claimed by the Licensed Subject Matter.

In consideration of the license granted hereunder, Licensee agrees to pay past patent costs not to exceed sixteen thousand seven hundred fifty-nine U.S. dollars ($16,759) and will bear all future patent costs for prosecuting and maintaining patents and patent applications in the Licensed Subject Matter as Licensee in its sole discretion elects to have performed using patent counsel of Licensee's choice. Licensee agrees to instruct its outside counsel within two (2) business days of the Effective Date of this Agreement to file a patent application in the European Patent Office claiming priority to PCT patent application No. US01/07173 on or before 30 November 2002, but the failure of the outside counsel to file the application in the European Patent Office on or before 30 November 2002 shall not be a breach of this Agreement by Licensee. Licensee shall keep Licensor reasonably informed of all such prosecution and maintenance activities, and Licensor shall assist Licensee, at Licensee's expense, in prosecuting patent applications and defending patents within, and prosecuting infringement of, the Licensed Subject Matter. Licensee shall give Licensor reasonable advance notice if Licensee determines not to prosecute or maintain any such patent or application, in which case Licensee's license to the patent or application Licensee elects not to prosecute or maintain, and obligation to make payments therefor hereunder (whether for prosecution, maintenance or as a royalty or milestone) shall terminate, and Licensor shall have the right to prosecute or maintain and defend or enforce such patent or application as Licensor in its discretion and at its cost elects.

Licensor's payment of past patent costs shall be distributed as follows, within thirty (30) days of the Effective Date: a check in the amount of fourteen thousand U.S. dollars ($14,000) shall be issued to Mr. Peter Michalos, a check in the amount of thirteen hundred seventy-nine and one-half U.S. dollars

($1379.50) shall be issued to Dr. Priebe, and a check in the amount of thirteen hundred seventy-nine and one-half U.S. dollars ($1379.50) shall be issued to Dr. Lampidis.

In further consideration of the license granted hereunder, Licensee agrees to pay Licensor a milestone payment of [***] upon the issuance of a patent or patents to Licensor containing a claim or claims of scope equal to the scope of Claim 1 or Claim 2 of PCT patent application No. US01/07173, as published in PCT publication No. 01/82926, published 8 November 2001, provided, however, that such claim or claims do not have to include compound numbers 11 through 25, inclusive, of such published claims. The milestone payment shall be distributed within [***] of the issuance of the patent or last of the patents that contain the required claim or claims as follows: a check in the amount of [***] shall be issued to Dr. Priebe, and a check in the amount of [***] shall be issued to Dr. Lampidis.

In further consideration of the license granted hereunder, Licensee agrees to pay Licensor a royalty on the Net Sales (gross amount invoiced minus deductions and allowances customary in the pharmaceutical industry or as defined, using a definition customary in the pharmaceutical industry, in any sublicense agreement relating to the Licensed Subject Matter negotiated by Licensee) of any product for which the manufacture, use, or sale of the product would infringe a valid and enforceable claim in an issued patent within the Licensed Subject Matter in such country of and at the time of such manufacture, use, or sale (respectively) ("Licensed Product"), such royalty to be either [***] of Net Sales of such Licensed Product if such claim is a method claim or [***] of Net Sales of such Licensed Product if such claim is a composition of matter claim, all as determined on a Licensed Product-by-Licensed Product and country-by-country basis. For clarity, where both composition and method claims cover the same Licensed Product, then the royalty rate on Net Sales of such Licensed Product shall be [***].

In further consideration of the license granted hereunder, Licensee agrees to pay Licensor milestone payments as follows: (a) Licensee shall pay Licensor [***] on filing an NDA for the first Licensed Product that is itself or the use thereof is claimed in an issued U.S. patent in the Licensed Subject Matter; and (b) Licensee shall pay Licensor [***] on the approval of the NDA for the first Licensed Product that is itself or the use thereof is claimed in an issued U.S. patent in the Licensed Subject Matter.

Licensor shall maintain the financial terms of this Agreement as well as any royalty or other reports it receives from Licensee in confidence. Notwithstanding the foregoing, either or both Dr. Priebe and Dr. Lampidis may disclose this Agreement to their respective employers, the University of Texas and the University of Miami, if either is under a prior agreement to make such disclosure, and provided each requests that the disclosure be treated as a confidential disclosure.

Licensor represents and warrants that as of the Effective Date it is the sole and exclusive owner of all right, title, and interest to the Licensed Subject Matter and that no other party has made any adverse claim of ownership thereto or inventorship of any portion thereof. Licensor represents and warrants that as of the Effective Date the University of Miami and the University of Texas, the employers of Dr. Lampidis and Dr. Priebe, respectively, at the time the inventions described in the Licensed Subject Matter were made, have waived all rights of ownership of the Licensed Subject Matter, except the right to practice the Licensed Subject Matter at and on behalf of the University of Miami and the University of Texas for non-commercial purposes.

Licensor and Licensee acknowledge that this Agreement has been prepared and executed under time constraint so that Licensee can endeavor to file a patent application in the European Patent Office claiming priority to the PCT application in the Licensed Subject Matter in the time permitted therefor to avoid loss of the ability to patent and agree that, should Licensee so request, a more detailed agreement (the "Detailed Agreement") containing all of the terms and conditions of this Agreement and such other conditions as are customary and usual in the pharmaceutical industry in licenses of similar nature and consistent with those herein shall be prepared and executed by the parties within three (3) months of Licensee's request. During such time period, each party shall be reasonably available to discuss any issues that may arise in connection with such preparation. In the event of such request by Licensee, Licensee shall pay up to [***] for Licensor's actual costs in consulting with an attorney regarding such Detailed Agreement, such payment to be fully creditable against the milestone payment due on NDA filing

set forth above. Up to [***] of this payment shall be paid within [***] after receipt of an invoice from Licensor's attorney detailing the services rendered in connection with the Detailed Agreement, and the remainder of such payment, to the extent Licensors incur attorney costs, and provide an invoice therefore to Licensee, over [***] in connection with the Detailed Agreement, shall be paid to Licensor's attorney [***] after the execution of such Detailed Agreement by the parties thereto.

This Agreement shall terminate upon the last to expire issued patent within the Licensed Subject Matter expiring (or being found invalid or unenforceable) or, if no such patent issues, the abandonment or lapse of the last to be abandoned or last to lapse patent application within the Licensed Subject Matter; provided, however, that Licensee may terminate this Agreement and its rights and obligations hereunder on a patent by patent or application by application basis as provided above or in its entirety by written notice to Licensor; and provided further that any such termination shall not terminate rights or obligations of either party having accrued prior thereto. Licensee agrees to terminate this Agreement in its entirety in the event that Licensee is not pursuing by its own actions or through its agents, subcontractors, and sublicensees of the Licensed Subject Matter research, development, marketing or commercialization activities relating to one or more products that is or are an invention claimed in the Licensed Subject matter or that is or are made by or useful in the practice of such an invention.

Licensee may assign this Agreement in conjunction with Licensee's merger with or acquisition of or by another entity, or the sale of all or substantially all of Licensee's assets to which this Agreement relates.

Any dispute arising hereunder shall be governed by California law (excluding its choice of law principles), and submitted to a court of competent subject matter within the County of San Francisco, to the personal jurisdiction and venue of each of which each party hereby consents.

This Agreement is the sole and exclusive agreement of the parties, and supercedes all prior agreements between them, with respect to the subject matter hereof, and may only be modified by a writing signed by both parties.

Licensor and Licensee, being in agreement with the terms and conditions set forth above, acknowledge their acceptance of the same by the signatures of their authorized representatives below.

THRESHOLD PHARMACEUTICALS, INC.

By: /s/ Harold E. Selick

DR. HAROLD E. SELICK
CHIEF EXECUTIVE OFFICER

Date: November 12, 2002

DR. THEODORE J. LAMPIDIS

/s/ Theodore J. Lampidis

Date: December 13, 2002

DR. WALDEMAR PRIEBE

/s/ Waldemar Priebe

Date: December 4, 2002

Exhibit 10.8

LOAN AND SECURITY AGREEMENT

By and Between

THRESHOLD PHARMACEUTICALS, INC.

And

SILICON VALLEY BANK

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This LOAN AND SECURITY AGREEMENT dated March 27, 2003, between SILICON VALLEY BANK ("Bank"), whose address is 3003 Tasman Drive, Santa Clara, California 95054 and THRESHOLD PHARMACEUTICALS, INC, a Delaware corporation ("Borrower"), whose address is 951 Gateway Boulevard, Suite 3A, South San Francisco, California 94080, provides the terms on which Bank will lend to Borrower and Borrower will repay Bank. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS.

Accounting terms not defined in this Agreement will be construed following GAAP. Calculations and determinations must be made following GAAP. The term "financial statements" includes the notes and schedules. The terms "including" and "includes" always mean "including (or includes) without limitation," in this or any Loan Document.

2. LOAN AND TERMS OF PAYMENT

2.1.1 Credit Extensions.

Borrower will pay Bank the unpaid principal amount of all Credit Extensions and interest on the unpaid principal amount of the Credit Extensions.

2.1.2Equipment Advances.

(a) Subject to the terms and conditions of this Agreement, Bank agrees to lend to Borrower, from time to time prior to the Equipment Availability End Date, equipment advances (each an "Equipment Advance" and collectively the "Equipment Advances") in an aggregate amount not to exceed the Committed Equipment Line. Each Equipment Advance may not exceed 100% of the Original Stated Cost (except for the portion of the first Equipment advance relating to Other Equipment, which may be used for general corporate or working capital purposes). When repaid, the Equipment Advances may not be re-borrowed. The proceeds of each Equipment Advance will be used solely to reimburse Borrower for the purchase of Eligible Equipment purchased within 90 days of such Equipment Advance (except for the portion of the first Equipment advance relating to Other Equipment, which may be used for general corporate or working capital purposes). Each Equipment Advance shall be considered a promissory note evidencing the amounts due hereunder for all purposes. Bank's obligation to lend hereunder shall terminate on the earlier of (i) the occurrence and continuance of an Event of Default, or (ii) the Equipment Availability End Date. For purposes of this Section, the minimum amount of each Equipment Advance is $100,000 except for the last Equipment Advance which may be for a lesser amount and the maximum number of Equipment Advances that will be made is 6.

(b) To obtain an Equipment Advance, Borrower must notify Bank (the notice is irrevocable) by facsimile no later than 12:00 noon Pacific time 1 Business Day before the day on which the Equipment Advance is to be made. The notice shall be in the form of Exhibit B (Payment/Advance Form) and must be signed by a Responsible Officer or designee and include a copy of the invoice for the Equipment being financed (except for the portion of the first Equipment advance relating to Other Equipment, which may be used for general corporate or

working capital purposes). Equipment Advances shall only be made on the first day of each month unless otherwise approved by Bank.

(c) Borrower will make equal monthly payments in advance of principal and interest for each Equipment Advance (collectively, "Scheduled Equipment Payments"), on the Funding Date (provided that if the Funding Date is not the first Business Day of the month, then Borrower shall make an interim payment as set forth below) and on each first Business Day of the month following the Funding Date with respect to such Equipment Advance and continuing thereafter during the Repayment Period on the first Business Day of each calendar month (each a "Payment Date") in an amount equal to the Loan Factor multiplied by the Loan Amount for such Equipment Advance as of such Payment Date. The full principal amount shall fully amortize over the Repayment Period. All unpaid principal and accrued interest is due and payable in full on the last Payment Date with respect to such Equipment Advance. Payments received after 12:00 noon Pacific time are considered received at the opening of business on the next Business Day. An Equipment Advance may only be prepaid in accordance with Section 2.1.2 (h).

(d) If the date of funding of an Equipment Advance is a date other than the first of the month, then, on that date Borrower will make an interim payment in an amount equal to the product of: (A) the quotient of: (i) the product of: (y) the amount of the Equipment Advance, multiplied by (z) a rate of interest equal to the Prime Rate plus 2%; divided by (ii) 360; multiplied by (B) the actual number of days (including the Funding Date) between the Funding Date and the first Business Day of the immediately following month.

(e) On the Equipment Advance Maturity Date with respect to each Equipment Advance, Borrower will pay, in addition to the unpaid principal and accrued interest and all other amounts due on such date with respect to such Equipment Advance, an amount equal to the Final Payment.

(f) If any Financed Equipment is subject to an Event of Loss and Borrower is required to or elects to prepay the Equipment Advance with respect to such Financed Equipment pursuant to Section 6.5, then such Equipment Advance shall be prepaid to the extent and in the manner provided in such section.

(g) Bank's obligation to lend the undisbursed portion of the Committed Equipment Line will terminate if, in Bank's reasonable discretion, there has been a Material Adverse Change.

(h) Each Equipment Advance may be prepaid in whole (solely in whole), without premium or penalty provided that: (i) no Event of Default has occurred and is continuing, (ii) Borrower provides Bank with at least five (5) days prior written notice, (iii) each such prepayment is in a minimum amount of $10,000; and (iv) Borrower pays Bank with respect to such Equipment Advance: (x) all outstanding principal; (y) all accrued and unpaid interest as well as any other amounts that have become due and payable as of the date of the prepayment; and (z) the Final Payment with respect to the Equipment Advance being prepaid. If the Equipment Advances are accelerated following the occurrence and continuation of an Event of Default or otherwise, then Borrower will immediately pay to Bank (i) all unpaid Scheduled

Equipment Payments (including principal and interest) with respect to each Equipment Advance, (ii) all remaining Scheduled Equipment Payments (including principal and unpaid interest and the Final Payment) (iii) all accrued unpaid interest, including the default rate of interest, to the date of the prepayment, and (iv) all other sums, if any, that shall have become due and payable with respect to each Equipment Advance.

2.2 Interest Rate, Payments.

(a) Interest Rate. Each Equipment Advance shall accrue interest on the outstanding principal balance at a fixed per annum rate determined as of the date of the applicable Funding Date equal to the greater of: (i) the Treasury Note Rate as of the applicable Funding Date plus 3% or (ii) 5.50%; and (which rate shall remain fixed for the term of the relevant Equipment Advance). After an Event of Default, Obligations accrue interest at 5 percent above the rate effective immediately before the Event of Default. Interest is computed on a 360 day year for the actual number of days elapsed.

(b) Bank may debit any of Borrower's deposit accounts including Account Number 3300317303 for principal and interest payments owing or any amounts Borrower owes Bank. Bank will notify Borrower when it debits Borrower's accounts. These debits are not a set-off. Payments received after 12:00 noon Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest accrue.

2.3 Fees.

Borrower will pay:

(a) Commitment Fee. Borrower shall pay Bank a commitment fee in the amount of $5,000, provided that if the Loan Documents are executed on or before March 21, 2003, the commitment fee shall be refunded to Borrower.

(b) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and reasonable expenses) incurred through and after the date of this Agreement, are payable when due.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension.

Bank's obligation to make the initial Credit Extension is subject to the condition precedent that it receive the agreements, documents and fees it requires.

3.2 Conditions Precedent to all Credit Extensions

Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following:

(a) timely receipt of any Payment/Advance Form; and

(b) the representations and warranties in Section 5 must be materially true on the date of the Payment/Advance Form and on the effective date of each Credit Extension and no Event of Default may have occurred and be continuing, or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties of Section 5 remain true in all material respects.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest.

Borrower grants Bank a continuing security interest in all presently existing and later acquired Collateral to secure all Obligations and performance of each of Borrower's duties under the Loan Documents. Any security interest will be a first priority security interest in the Collateral. If this Agreement is terminated, Bank's lien and security interest in the Collateral will continue until Borrower fully satisfies its Obligations.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization and Authorization.

Borrower and each Subsidiary is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, any state in which the conduct of its business or its ownership of property requires that it be qualified, except where the failure to do so could not reasonably be expected to cause a Material Adverse Change.

The execution, delivery and performance of the Loan Documents have been duly authorized, and do not conflict with Borrower's formation documents, nor constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which or by which it is bound in which the default could reasonably be expected to cause a Material Adverse Change.

5.2 Collateral.

Borrower has good title to the Collateral subject to the liens and security interests granted to Bank hereunder.

5.3 Litigation.

Except as shown in the Schedule, there are no actions or proceedings pending or, to the knowledge of Borrower's Responsible Officers and legal counsel, threatened by or against Borrower or any Subsidiary in which a likely adverse decision could reasonably be expected to cause a Material Adverse Change.

5.4 No Material Adverse Change in Financial Statements

All consolidated financial statements for Borrower, and any Subsidiary, delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.5 Solvency.

The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; the Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.6 Regulatory Compliance.

Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to cause a Material Adverse Change. None of Borrower's or any Subsidiary's properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each Subsidiary has timely filed all required tax returns and paid, or made adequate provision to pay, all material taxes, except those being contested in good faith with adequate reserves under GAAP. Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities that are necessary to continue its business as currently conducted, except where the failure to do so could not reasonably be expected to cause a Material Adverse Change.

5.7 Subsidiaries.

Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.8 Full Disclosure.

No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank (taken together with all such written certificates and written statements to Bank) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading. It being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results

during the period or periods covered by such projections and forecasts may differ from the projected and forecasted results.

6. AFFIRMATIVE COVENANTS

Borrower will do all of the following:

6.1 Government Compliance.

Borrower will maintain its and all Subsidiaries' legal existence and good standing in its jurisdiction of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to cause a material adverse effect on Borrower's business or operations. Borrower will comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could reasonably be expected to have a material adverse effect on Borrower's business or operations or would reasonably be expected to cause a Material Adverse Change.

6.2 Financial Statements, Reports, Certificates.

(a) Borrower will deliver to Bank: (i) as soon as available, but no later than 30 days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during the period, in a form and certified by a Responsible Officer acceptable to Bank; (ii) as soon as available, but no later than 120 days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank; (iii) as soon as available but no later than 45 days after fiscal year end, Borrower's financial projections for the upcoming fiscal year approved by Borrower's Board of Directors and in form and substance reasonably satisfactory to Bank (iv) a prompt report of any legal actions pending or threatened against Borrower or any Subsidiary that could result in damages or costs to Borrower or any Subsidiary of $150,000 or more; and (v) budgets, sales projections, operating plans or other financial information Bank reasonably requests.

(b) Within 30 days after the last day of each month, Borrower will deliver to Bank with the monthly financial statements a Compliance Certificate signed by a Responsible Officer in the form of Exhibit C.

(c) Bank has the right to audit Borrower's Collateral at Borrower's expense, but the audits will be conducted no more often than every six months unless an Event of Default has occurred and is continuing.

6.3 Inventory; Returns.

Borrower will keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its account debtors will follow Borrower's customary practices. Borrower must promptly notify Bank of all returns, recoveries, disputes and claims, that involve more than $100,000.

6.4 Taxes.

Borrower will make, and cause each Subsidiary to make, timely payment of all material federal, state, and local taxes or assessments unless contested in good faith with adequate reserves under GAAP and will deliver to Bank, on demand, appropriate certificates attesting to the payment.

6.5 Loss; Destruction; or Damage.

Borrower will bear the risk of the Financed Equipment being lost, stolen, destroyed, or damaged. If during the term of this Agreement any item of Financed Equipment is lost, stolen, destroyed, damaged beyond repair, rendered permanently unfit for use, or seized by a governmental authority for any reason for a period equal to at least the remainder of the term of this Agreement (an "Event of Loss"), then in each case, Borrower:

(a) Prior to the occurrence of an Event of Default, at Borrower's option, will (i) pay to Bank on account of the Obligations all accrued interest to the date of the prepayment, plus all outstanding principal plus the Final Payment, in each case with respect to such Financial Equipment related to the Event of Loss; or (ii) repair or replace any Financed Equipment subject to an Event of Loss provided the repaired or replaced Financed Equipment is of equal or like value to the Financed Equipment subject to an Event of Loss and provided further that Bank has a first priority perfected security interest in such repaired or replaced Financed Equipment.

(b) During the continuance of an Event of Default, on or before the Payment Date after such Event of Loss for each such item of Financed Equipment subject to such Event of Loss, Borrower will, at Bank's option, pay to Bank an amount equal to the sum of: (i) all accrued and unpaid Scheduled Equipment Payments (with respect to such Financed Equipment Advance related to the Event of Loss) due prior to the next such Payment Date, (ii) all Regularly Scheduled Equipment Payments (including principal and interest), (iii) the Final Payment, plus (iv) all other sums, if any, that shall have become due and payable, including interest at the Default Rate with respect to any past due amounts.

(c) On the date of receipt by Bank of the amount specified above with respect to each such item of Financed Equipment subject to an Event of Loss, this Agreement shall terminate as to such Financed Equipment. If any proceeds of insurance or awards received from governmental authorities are in excess of the amount owed under this Section 6.5, Bank shall promptly remit to Borrower the amount in excess of the amount owed to Bank.

6.6 Insurance.

Borrower will keep its business and the Collateral insured for risks and in amounts, as customary for businesses in Borrower's industry and locale; provided, however, that insurance coverages shall be substantially similar to the coverage maintained by Borrower as of the Closing Date **(to be determined by Bank)**. Insurance policies will be in a form, with companies, and in amounts that are satisfactory to Bank in Bank's reasonable discretion. All property policies will have a lender's loss payable endorsement showing Bank as an additional loss payee and all liability policies will show the Bank as an additional insured and provide that

the insurer must give Bank at least 20 days notice before canceling its policy. At Bank's request, Borrower will deliver certified copies of policies and evidence of all premium payments.

6.7 Primary Accounts.

Borrower will maintain its primary depository and operating accounts with Bank. In addition, Borrower shall maintain at Bank or one of Bank's affiliates unrestricted cash and cash equivalents in an amount equal to the lesser of: (i) 85% of Borrower's total cash and cash equivalents (as measured by Borrower's reporting due hereunder), or (ii) $10,000,000.

6.8 Registration of Intellectual Property Rights.

Borrower will, as it deems necessary and in accordance with its customary practice, register with the United States Patent and Trademark Office or the United States Copyright Office its Intellectual Property within 30 days of the date of this Agreement, and additional Intellectual Property rights developed or acquired including revisions or additions with any product before the sale or licensing of the product to any third party.

Borrower will, as it deems necessary and in accordance with its customary practices, (i) protect, defend and maintain the validity and enforceability of the Intellectual Property and promptly advise Bank in writing of material infringements and (ii) not allow any Intellectual Property deemed to be material by the Borrower to be abandoned, forfeited or dedicated to the public without Bank's written consent.

6.9 Further Assurances.

Borrower will execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's security interest in the Collateral or to effect the purposes of this Agreement.

7. NEGATIVE COVENANTS

Borrower will not do any of the following without Bank's prior written consent, which will not be unreasonably withheld:

7.1 Dispositions.

Convey, sell, lease, transfer or otherwise dispose of (collectively "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than Transfers (i) of Inventory in the ordinary course of business; (ii) of non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and exclusive licenses limited in duration, territory and industry and approved by Borrower's Board of Directors; or (iii) of worn-out or obsolete Equipment (other than Financed Equipment).

7.2 Changes in Business, Ownership, Management or Business Locations

Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower or reasonably related thereto or have a material change in its ownership or management (other than the sale of Borrower's equity securities in a public offering or to venture capital investors approved by Bank) of greater than 25%. Borrower will not, without at least 30 days prior written notice, relocate its chief executive office or add any new offices or business locations.

7.3 Mergers or Acquisitions.

Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, except where (i) no Event of Default has occurred and is continuing or would result from such action during the term of this Agreement and (ii) such transaction would not result in a decrease of more than 25% of Tangible Net Worth. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness.

Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance.

Create, incur, or allow any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted here, subject to Permitted Liens.

7.6 Distributions; Investments.

Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments, or permit any of its Subsidiaries to do so. Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock except (a) dividends and distributions solely in the capital stock of Borrower and (b) repurchases of stock from former employees or directors of Borrower under the terms of applicable repurchase or stock option plans or agreements in an aggregate amount not to exceed $100,000 in any one fiscal year, so long as no Event of Default has occurred, is continuing or would exist after giving effect to such repurchases.

7.7 Transactions with Affiliates.

Directly or indirectly enter into or permit any material transaction with any Affiliate except transactions that are in the ordinary course of Borrower's business, on terms less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.8 Subordinated Debt.

Make or permit any payment on any Subordinated Debt, except under the terms of the Subordinated Debt, or amend any provision in any document relating to the Subordinated Debt without Bank's prior written consent.

7.9 Compliance.

Become an "investment company" or a company controlled by an "investment company," under the Investment Company Act of 1940 or undertake as one of its important activities extending credit to purchase or carry margin stock, or use the proceeds of any Credit Extension for that 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 other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business or operations or would reasonably be expected to cause a Material Adverse Change, or permit any of its Subsidiaries to do so.

8. EVENTS OF DEFAULT

Any one of the following is an Event of Default:

8.1 Payment Default.

If Borrower fails to pay any of the Obligations within 3 days after their due date. During the additional period the failure to cure the default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

If Borrower does not perform any obligation in Section 6 or violates any covenant in Section 7 or does not perform or observe any other material term, condition or covenant in this Agreement, any Loan Documents, or in any agreement between Borrower and Bank and as to any default under a term, condition or covenant that can be cured, has not cured the default within 10 days after it occurs, or if the default cannot be cured within 10 days or cannot be cured after Borrower's attempts within 10 day period, and the default may be cured within a reasonable time, then Borrower has an additional period (of not more than 30 days) to attempt to cure the default. During the additional time, the failure to cure the default is not an Event of Default (but no Credit Extensions will be made during the cure period);

8.3 Material Adverse Change.

If there (i) occurs a material adverse change in the business operations, or condition (financial or otherwise) of the Borrower; or (ii) is a material impairment of the prospect of repayment of any portion of the Obligations; or (iii) is a material impairment of the value or priority of Bank's security interests in the Collateral.

8.4 Attachment.

If any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure or levy is not removed in 10 days, or if Borrower is enjoined, restrained, or prevented by court order from conducting a material part of its business or if a judgment or other claim becomes a Lien on a material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed against any of Borrower's assets by any government agency and not paid within 10 days after Borrower receives notice. These are not Events of Default if stayed or if a bond is posted pending contest by Borrower (but no Credit Extensions will be made during the cure period);

8.5 Insolvency.

If Borrower becomes insolvent or if Borrower begins an Insolvency Proceeding or an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within 45 days (but no Credit Extensions will be made before any Insolvency Proceeding is dismissed);

8.6 Other Agreements.

If there is a default in any agreement between Borrower and a third party that gives the third party the right to accelerate any Indebtedness exceeding $150,000 or that could cause a Material Adverse Change;

8.7 Judgments.

If a money judgment(s) in the aggregate of at least $100,000 is rendered against Borrower and is unsatisfied and unstayed for 10 days (but no Credit Extensions will be made before the judgment is stayed or satisfied);

8.8 Misrepresentations.

If Borrower or any Person acting for Borrower makes any material misrepresentation or material misstatement now or later in any warranty or representation in this Agreement or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document; or

9. BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies.

When an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following:

(a) Declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) Stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) Make any payments and do any acts it considers necessary or reasonable to protect its security interest in the Collateral. Borrower will assemble the Collateral if Bank requires and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Upon and during the continuance of an Event of Default, Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(d) Apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(e) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Upon and during the continuance of an Event of Default, Bank is granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, rights of use of any name, trade secrets, trade names, Trademarks, service marks, and advertising matter, or any similar property 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, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit; and

(f) Dispose of the Collateral according to the Code.

9.2 Power of Attorney.

Effective only when an Event of Default occurs and continues, Borrower irrevocably appoints Bank as its lawful attorney to: (i) endorse Borrower's name on any checks or other forms of payment or security; (ii) make, settle, and adjust all claims under Borrower's insurance policies with respect to the Collateral; and (iii) transfer the Collateral into the name of Bank or a third party as the Code permits. Bank may exercise the power of attorney to sign Borrower's name on any documents necessary to perfect or continue the perfection of any security interest regardless of whether an Event of Default has occurred. Bank's appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

9.3 Accounts Collection.

When an Event of Default occurs and continues, Borrower must collect all payments in trust for Bank and, if requested by Bank, immediately deliver the payments to Bank in the form received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses.

If Borrower fails to pay any amount or furnish any required proof of payment to third persons, Bank may make all or part of the payment or obtain insurance policies required in Section 6.5, and take any action under the policies Bank deems prudent. Any amounts paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then applicable rate and secured by the Collateral. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.5 Bank's Liability for Collateral.

If Bank complies with reasonable banking practices and Section 9-207 of the Code, it is not liable for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 Remedies Cumulative.

Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay is not a waiver, election, or acquiescence. No waiver is effective unless signed by Bank and then is only effective for the specific instance and purpose for which it was given.

9.7 Demand Waiver.

Borrower waives demand, 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 held by Bank on which Borrower is liable.

10. NOTICES

All notices or demands by any party about this Agreement or any other related agreement must be in writing and be personally delivered or sent by an overnight delivery service, by certified mail, postage prepaid, return receipt requested, or by telefacsimile to the addresses set forth at the beginning of this Agreement. A party may change its notice address by giving the other party written notice.

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California.

BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

12. GENERAL PROVISIONS

12.1 Successors and Assigns.

This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights under it without Bank's prior written consent which may be granted or withheld in Bank's discretion. Bank has the right, without the consent of or notice to Borrower, to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits under this Agreement.

12.2 Indemnification.

Borrower will indemnify, defend and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Bank Expenses incurred, or paid by Bank from, following, or consequential to transactions between Bank and Borrower (including reasonable attorneys fees and expenses), except in each case, for obligations, demands, claims, liabilities and 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 in this Agreement.

12.4 Severability of Provision.

Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Amendments in Writing, Integration.

All amendments to this Agreement must be in writing and signed by Borrower and Bank. This Agreement represents the entire agreement about this subject matter, and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement merge into this Agreement and the Loan Documents.

12.6 Counterparts.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one Agreement.

12.7 Survival.

All covenants, representations and warranties made in this Agreement continue in full force while any Obligations remain outstanding. The obligations of Borrower in Section 12.2 to indemnify Bank will survive until all statutes of limitations for 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 (i) to Bank's subsidiaries or affiliates in connection with their business with Borrower, (ii) to prospective transferees or purchasers of any interest in the loans, (iii) as required by law, regulation, subpoena, or other order, (iv) as required in connection with Bank's examination or audit and (v) as Bank considers appropriate exercising remedies under this Agreement. Confidential information does not include information that either: (a) is in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (b) 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 Attorneys' Fees, Costs and Expenses.

In any action or proceeding between Borrower and Bank arising out of the Loan Documents, the prevailing party will be entitled to recover its reasonable attorneys' fees and other reasonable costs and expenses incurred, in addition to any other relief to which it may be entitled.

13. DEFINITIONS

13.1 Definitions.

In this Agreement:

"**Accounts**" are all existing and later arising accounts, contract rights, and other obligations owed Borrower in connection with its sale or lease of goods (including licensing software and other technology) or provision of services, all credit insurance, guaranties, other security and all merchandise returned or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"**Affiliate**" of a Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and

each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Bank Expenses**" are all audit fees and expenses and reasonable costs and expenses (including reasonable attorneys' fees and expenses) for preparing, negotiating, administering, defending and enforcing the Loan Documents (including appeals or Insolvency Proceedings).

"**Borrower's Books**" are all Borrower's books and records including ledgers, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition and all computer programs or discs or any equipment containing the information.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which the Bank is closed.

"**Closing Date**" is the date of this Agreement.

"**Code**" is the California Uniform Commercial Code.

"**Collateral**" is the property described on Exhibit A.

"**Committed Equipment Line**" is a Credit Extension of up to $1,000,000 provided that Borrower must utilize $300,000 to finance Other Equipment on the Closing Date, failure to borrow the above referenced $300,000 on the Closing Date shall result in the Committed Equipment Line being reduced automatically to $700,000.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (i) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (ii) any obligations for undrawn letters of credit for the account of that Person; and (iii) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under the guarantee or other support arrangement.

"**Copyrights**" are all copyright rights, applications or registrations and like protections in each work or authorship or derivative work, whether published or not (whether or not it is a trade secret) now or later existing, created, acquired or held.

"**Credit Extension**" is each Equipment Advance or any other extension of credit by Bank for Borrower's benefit.

"**Eligible Equipment**" is laboratory equipment, computer hardware, office equipment, furniture, and Other Equipment located at one of Borrower's locations within the United States.

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

"**Equipment Advance**" is defined in Section 2.1.2.

"**Equipment Advance Maturity Date**" is, with respect to each Equipment Advance, the last day of the Repayment Period for such Equipment Advance, or if earlier, the date of acceleration of such Equipment Advance by Bank following an Event of Default.

"**Equipment Availability End Date**" is December 31, 2003, provided, however, that should Borrower receive $4,000,000 or more in cash from third party equity financing or grants on or before December 30, 2003, then the Equipment Availability End Date shall be March 31, 2004.

"**ERISA**" is the Employment Retirement Income Security Act of 1974, and its regulations.

"**Event of Loss**" is defined in Section 6.5.

"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the Equipment Advance Maturity Date for such Equipment Advance equal to the Loan Amount for such Equipment Advance multiplied by the Final Payment Percentage.

"**Final Payment Percentage**" is for each Equipment Advance, 5.25%.

"**Financed Equipment**" is Equipment financed with an Equipment Advance.

"**Funding Date**" is the date an Equipment Advance is made.

"**GAAP**" is generally accepted accounting principles.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

"**Insolvency Proceeding**" are proceedings by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Intellectual Property**" is:

(a) Copyrights, Trademarks, and Patents, including amendments, renewals, extensions, and all licenses or other rights to use and all license fees and royalties from the use;

(b) Any trade secrets and any intellectual property rights in computer software and computer software products now or later existing, created, acquired or held;

(c) All design rights which may be available to Borrower now or later created, acquired or held;

(d) Any claims for damages (past, present or future) for infringement of any of the rights above, with the right, but not the obligation, to sue and collect damages for use or infringement of the intellectual property rights above;

All proceeds and products of the foregoing, including all insurance, indemnity or warranty payments.

"**Inventory**" is present and future inventory in which Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, 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 later owned by or in the custody or possession, actual or constructive, of Borrower, including inventory temporarily out of its custody or possession or in transit and including returns on any accounts or other proceeds (including insurance proceeds) from the sale or disposition of any of the foregoing and any documents of title.

"**Investment**" is any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"**Lien**" is a mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"**Loan Amount**" is the aggregate amount of the Equipment Advance.

"**Loan Documents**" are, collectively, this Agreement, any note, or notes executed by Borrower, and any other present or future agreement between Borrower and/or for the benefit of Bank in connection with this Agreement, all as amended, extended or restated.

"**Loan Factor**" is the percentage which results from amortizing the Equipment Advance over the Repayment Period, using the rate of interest set forth in Section 2.2(a) as the interest rate.

"**Material Adverse Change**" is defined in Section 8.3.

"**Obligations**" are debts, principal, interest, Bank Expenses and other amounts Borrower owes Bank now or later, including cash management services, letters of credit and foreign exchange contracts, if any and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank.

"**Original Stated Cost**" is (i), the original cost to the Borrower of the item of new Equipment net of any and all freight, installation, tax or (ii) the fair market value assigned to such item of used Equipment by mutual agreement of Borrower and Bank at the time of making of the Equipment Advance.

"**Other Equipment**" means software, fixtures or general corporate or working capital expenses,provided, however, that Other Equipment shall be financed solely with the initial Equipment Advance made on the Closing Date and shall equal $300,000. Bank shall not finance Other Equipment after the Closing Date or in an amount of less than $300,000.

"**Patents**" are patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment Date**" is defined in Section 2.1.2(c).

"**Permitted Indebtedness**" is:

(a) Borrower's indebtedness to Bank under this Agreement or any other Loan Document;

(b) Indebtedness existing on the Closing Date and shown on the Schedule;

(c) Subordinated Debt;

(d) Indebtedness to trade creditors incurred in the ordinary course of business; and

(e) Indebtedness secured by Permitted Liens.

(f) Indebtedness of Borrower to any Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of Borrower (provided that the primary obligations are not prohibited hereby), and Indebtedness of any Subsidiary to any other Subsidiary and Contingent Obligations of any Subsidiary with respect to obligations of any other Subsidiary (provided that the primary obligations are not prohibited hereby);

(g) Other Indebtedness not otherwise permitted by Section 7.4 not exceeding $100,000 in the aggregate outstanding at any time; and

(h) Indebtedness consisting of accrued dividends, if any, on Borrower's stock."

"**Permitted Investments**" are:

(a) Investments shown on the Schedule and existing on the Closing Date; and

(b) (i) marketable direct obligations issued or unconditionally guaranteed by the United States or its agency or any State maturing within 1 year from its acquisition, (ii) commercial paper maturing no more than 1 year after its creation and having the highest

rating from either Standard & Poor's Corporation or Moody's Investors Service, Inc., and (iii) Bank's certificates of deposit issued maturing no more than 1 year after issue;

(c) Investments consisting of Borrower's accounts receivable in the ordinary course of business;

(d) Investments consisting of loans to employees, officers or directors relating to (i) the purchase of equity securities of Borrower or its Subsidiaries pursuant to Borrower's employee stock purchase plans or agreements or (ii) Borrower's compensation or relocation plans or agreements, each as approved in good faith by Borrower's board of directors in an aggregate amount not to exceed $100,000 in any one fiscal year;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers and suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business;

(f) Investments in other entities in connection with acquisitions, joint ventures or other strategic transactions which are otherwise permitted under this Agreement, provided that (A) no Event of Default has occurred which is continuing or would exist after giving effect to such Investment and (B) the consideration paid by Borrower in exchange for such Investments consists solely of (i) equity interests of the Borrower or its Subsidiaries, (ii) licenses, sublicenses, leases or subleases in the ordinary course of business, and/or (iii) technical or scientific support or services;

(g) Investments of Subsidiaries in or to other Subsidiaries or Borrower and Investments by Borrower in Subsidiaries not to exceed $150,000 in the aggregate; and

(h) Other Investments aggregating no more than $100,000 at any time."

"**Permitted Liens**" are:

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

(b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which Borrower maintains adequate reserves on its Books, if they have no priority over any of Bank's security interests;

(c) Purchase money Liens (i) on Equipment acquired or held by Borrower or its Subsidiaries incurred for financing the acquisition of the Equipment, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment;

(d) Licenses or sublicenses granted in the ordinary course of Borrower's business and any interest or title of a licensor or under any license or sublicense;

(e) Leases or subleases granted in the ordinary course of Borrower's business, including in connection with Borrower's leased premises or leased property;

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c) but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) Liens in favor of Bank hereunder;

(h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.7;

(i) Liens in favor of other financial institutions arising in connection with Borrower's accounts held at such institutions;

(j) Liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons or entities imposed without action of such parties, provided that the payment thereof is not yet required;

(k) Liens incurred or deposits made in the ordinary course of Borrower's business in connection with worker's compensation, unemployment insurance, social security and other like laws;

(l) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances affecting real property not interfering in any material respect with the ordinary conduct of Borrower's business; and

(m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company association, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Prime Rate**" is Bank's most recently announced "prime rate," even if it is not Bank's lowest rate.

"**Repayment Period**" is 36 months.

"**Responsible Officer**" is each of the Chief Executive Officer, the President, the Chief Financial Officer and the Controller of Borrower.

"**Schedule**" is any attached schedule of exceptions.

"**Scheduled Equipment Payments**" is defined in Section 2.1.2.

"**Subordinated Debt**" is debt incurred by Borrower subordinated to Borrower's indebtedness owed to Bank and which is reflected in a written agreement in a manner and form acceptable to Bank and approved by Bank in writing.

"**Subsidiary**" is for any Person, or any other business entity of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by the Person or one or more Affiliates of the Person.

"**Tangible Net Worth**" is, on any date, the consolidated total assets of Borrower and its Subsidiaries minus, (i) any amounts attributable to (a) goodwill, (b) intangible items such as unamortized debt discount and expense, Patents, trade and service marks and names, Copyrights and research and development expenses except prepaid expenses, and (c) reserves not already deducted from assets, and (ii) Total Liabilities.

"**Total Liabilities**" is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower's consolidated balance sheet, including all Indebtedness, and current portion Subordinated Debt allowed to be paid, but excluding all other Subordinated Debt.

"**Trademarks**" are trademark and servicemark rights, registered or not, applications to register and registrations and like protections, and the entire goodwill of the business of Assignor connected with the trademarks.

"**Treasury Note Rate**" is the U.S. Treasury note yield to maturity for a term equal to 36 months as quoted in The Wall Street Journal on the Funding Date.

BORROWER:

THRESHOLD PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Janet I. Swearson

Title: Chief Financial Officer

BANK:

SILICON VALLEY BANK

By: /s/ Peter Scott

Title: SVP

EXHIBIT A

The Collateral consists of all of Borrower's right, title and interest in and to the following:

All of Borrower's equipment financed with proceeds of this Loan and Security Agreement as listed on Schedule A attached hereto; and

All Borrower's Books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof.

EXHIBIT B

LOAN PAYMENT/ADVANCE TELEPHONE REQUEST FORM

DEADLINE FOR SAME DAY PROCESSING IS 12:00 P.M., P.S.T.

TO: CENTRAL CLIENT SERVICE DIVISION DATE: _____

FAX#: (408) 496-2426 TIME: _____

FROM: Threshold Pharmaceuticals, Inc.

CLIENT NAME (BORROWER)

REQUESTED BY: _____

AUTHORIZED SIGNER'S NAME

AUTHORIZED SIGNATURE: _____

PHONE NUMBER: _____

FROM ACCOUNT # _____ TO ACCOUNT # _____

REQUESTED TRANSACTION TYPE	REQUESTED DOLLAR AMOUNT
PRINCIPAL INCREASE (ADVANCE)	$_____
PRINCIPAL PAYMENT (ONLY)	$_____
INTEREST PAYMENT (ONLY)	$_____
PRINCIPAL AND INTEREST (PAYMENT)	$_____

OTHER INSTRUCTIONS: _____

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the telephone request for and Advance confirmed by this Borrowing Certificate; but those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of that date.

BANK USE ONLY

TELEPHONE REQUEST:

The following person is authorized to request the loan payment transfer/loan advance on the advance designated account and is known to me.

_____ _____

Authorized Requester Phone #

_____ _____

Received By (Bank) Phone #

_____

Authorized Signature (Bank)

EXHIBIT C
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK
3003 Tasman Drive
Santa Clara, CA 95054

FROM: THRESHOLD PHARMACEUTICALS, INC.
951 Gateway Boulevard
Suite 3A
South San Francisco, CA 94080

The undersigned authorized officer of Threshold Pharmaceuticals, Inc. ("Borrower") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"), (i) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below and (ii) all representations and warranties in the Agreement are true and correct in all material respects on this date. Attached are the required documents supporting the certification. The Officer certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The Officer acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered.

Please indicate compliance status by circling Yes/No under "Complies" column.

Reporting Covenant	Required	Complies
Monthly financial statements + CC	Monthly within 30 days	Yes No
Annual (Audited)	FYE within 120 days	Yes No

Comments Regarding Exceptions: See Attached.

Sincerely,

THRESHOLD PHARMACEUTICALS, INC.

_____
SIGNATURE

_____
TITLE

_____
Date

BANK USE ONLY

Received by: _____
AUTHORIZED SIGNER

Date: _____

Verified: _____
AUTHORIZED SIGNER

Date: _____

Compliance Status: Yes No

CORPORATE BORROWING RESOLUTION

Borrower:	**Threshold Pharmaceuticals, Inc.** **951 Gateway Boulevard** **Suite 3A** **South San Francisco, CA 94080**	**Bank:**	**Silicon Valley Bank** **3003 Tasman Drive** **Santa Clara, CA 95054-1191**

I, the Secretary or Assistant Secretary of Threshold Pharmaceuticals, Inc. ("Borrower"), CERTIFYthat Borrower is a corporation existing under the laws of the State of Delaware.

I certify that at a meeting of Borrower's Directors (or by other authorized corporate action) duly held the following resolutions were adopted.

It is resolved that **any one** of the following officers of Borrower, whose name, title and signature is below:

NAMES	POSITIONS	ACTUAL SIGNATURES
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

may act for Borrower and:

Borrow Money. Borrow money from Silicon Valley Bank ("Bank").

Execute Loan Documents. Execute any loan documents Bank requires.

Grant Security. Grant Bank a security interest in any of Borrower's assets.

Negotiate Items. Negotiate or discount all drafts, trade acceptances, promissory notes, or other indebtedness in which Borrower has an interest and receive cash or otherwise use the proceeds.

Letters of Credit. Apply for letters of credit from Bank.

Issue Warrants. Issue warrants for Borrower's stock.

Further Acts. Designate other individuals to request advances, pay fees and costs and execute other documents or agreements (including documents or agreement that waive Borrowers right to a jury trial) they think necessary to effectuate these Resolutions.

Further resolved that all acts authorized by these Resolutions and performed before they were adopted are ratified. These Resolutions remain in effect and Bank may rely on them until Bank receives written notice of their revocation.

I certify that the persons listed above are Borrower's officers with the titles and signatures shown following their names and that these resolutions have not been modified are currently effective.

CERTIFIED TO AND ATTESTED BY:

X _____

*Secretary or Assistant Secretary

X _____

*NOTE: In case the Secretary or other certifying officer is designated by the foregoing resolutions as one of the signing officers, this resolution should also be signed by a second Officer or Director of Borrower.

EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated April 8, 2004, relating to the financial statements of Threshold Pharmaceuticals, Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
April 9, 2004