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

FORM 10-Q

(Mark One)

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

For the Quarterly Period Ended June 30, 2001

OR

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

For the transition period from ________to _________

Commission file number 0-19756

PROTEIN DESIGN LABS, INC.

(Exact name of Registrant as specified in its Charter)

Delaware	**94-3023969**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification Number)

34801 Campus Drive
Fremont, California, 94555
(Address of Principal Executive Offices including Zip Code)

(510) 574-1400
(Registrant's Telephone Number, Including Area Code)

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

As of July 31, 2001, there were 43,831,630 shares of the Registrant's Common Stock outstanding.

PROTEIN DESIGN LABS, INC.
QUARTERLY REPORT ON FORM 10-Q FOR THE PERIOD ENDED JUNE 30, 2001
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Protein Design Labs, our logo and SMART are registered U.S. trademarks and Nuvion, Remitogen and Zamyl are trademarks of Protein Design Labs, Inc. Zenapax is a registered U.S. trademark of Hoffmann-La Roche Inc. All other company names and trademarks included in this Quarterly Report are trademarks, registered trademarks or trade names of their respective owners.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PROTEIN DESIGN LABS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except net income per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2001	2000	2001	2000
Revenues:				
Revenue under agreements with third parties	$12,667	$15,893	$29,378	$28,343
Interest and other income	8,982	4,472	18,441	7,521
Total revenues	21,649	20,365	47,819	35,864
Costs and expenses:				
Research and development	12,207	10,216	25,879	21,284
General and administrative	4,052	2,870	7,672	5,329

Interest expense	2,250	2,257	4,497	3,460
Total costs and expenses	18,509	15,343	38,048	30,073
Net income	$3,140	$5,022	$9,771	$5,791
Net income per share:				
Basic	$0.07	$0.13	$0.22	$0.15
Diluted	$0.07	$0.12	$0.21	$0.13
Weighted average number of shares:				
Basic	43,722	39,514	43,669	39,218
Diluted	46,592	43,262	46,424	43,186

See accompanying notes

PROTEIN DESIGN LABS, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value per share)

	June 30, 2001	December 31, 2000
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	$138,062	$421,541
Marketable securities	507,697	239,632
Other current assets	4,520	1,980
Total current assets	650,279	663,153
Property and equipment, net	38,380	37,673
Convertible note receivable	30,000	--
Other assets	3,808	4,154
	$722,467	$704,980
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	1,183	1,062
Accrued compensation	1,443	1,729
Accrued clinical trials	1,733	1,103
Accured interest	3,071	3,071
Other accrued liabilities	2,010	2,692
Deferred revenue	100	1,455
Current portion of other long-term debt	415	400
Total current liabilities	9,955	11,512
Convertible subordinated notes	150,000	150,000
Other long-term debt	9,111	9,324
Total liabilities	169,066	170,836
Stockholders' equity:		
Preferred stock, par value $0.01 per share, 10,000 shares authorized; no shares issued and outstanding	--	--
Common stock, par value $0.01 per share, 250,000 shares authorized; 43,824 and 43,576 issued and outstanding at June 30, 2001 and December 31, 2000, respectively	438	436
Additional paid-in capital	617,064	611,690
Accumulated deficit	(68,799)	(78,570)
Accumulated other comprehensive income	4,698	588

Total stockholders' equity	553,401	534,144
	$722,467	$704,980

See accompanying notes

PROTEIN DESIGN LABS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

(unaudited)
(In thousands)

	Six Months Ended June 30,	
	2001	2000
Cash flows from operating activities:		
Net income	$9,771	$5,791
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	2,277	1,665
Amortization of convertible notes offering costs	361	269
Other	(5,016)	179
Changes in assets and liabilities:		
Other current assets	(2,542)	4,447
Other assets	(14)	(4,231)
Accounts payable	121	(304)
Accrued liabilities	(339)	2,607
Deferred revenue	(1,355)	(942)
Total adjustments	(6,507)	3,690
Net cash provided by operating activities	3,264	9,481
Cash flows from investing activities:		
Purchase of convertible note	(30,000)	--
Purchases of marketable securities	(377,011)	--
Maturities of marketable securities	117,885	5,000
Purchase of property, plant and equipment	(2,796)	(1,777)
Net cash provided by (used in) investing activities	(291,922)	3,223
Cash flows from financing activities:		
Proceeds from convertible notes	--	150,000
Proceeds from issuance of capital stock, net of issuance	5,376	15,312
Payments on other long-term debt	(197)	(181)
Net cash provided by financing activities	5,179	165,131
Net increase (decrease) in cash and cash equivalents	(283,479)	177,835
Cash and cash equivalents at beginning of period	421,541	17,138
Cash and cash equivalents at end of period	$138,062	$194,973

See accompanying notes

PROTEIN DESIGN LABS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2001
(unaudited)

Summary of Significant Accounting Policies

Organization and Business

Protein Design Labs, Inc. is a biotechnology company engaged in the development of humanized antibodies to prevent or treat various disease conditions. PDL currently has antibodies under development for autoimmune and inflammatory conditions, asthma and cancer. PDL holds fundamental patents in the U.S., Europe and Japan for its antibody humanization technology.

Basis of Presentation and Responsibility for Quarterly Financial Statements

The Consolidated Balance Sheet as of June 30, 2001, the Consolidated Statements of Operations for the three and six months ended June 30, 2001 and 2000 and the Consolidated Statements of Cash Flows for the six months ended June 30, 2001 and 2000 are unaudited, but include all adjustments (consisting only of normal recurring adjustments) which we consider necessary for a fair presentation of our financial position at such dates and the operating results and cash flows for those periods. Although we believe that the disclosures in our financial statements are adequate to make the information presented not misleading, certain information and footnote information normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission. The accompanying financial statements should be read in conjunction with the our Annual Report on Form 10-K, filed with the Securities and Exchange Commission, for the year ended December 31, 2000. The Consolidated Balance Sheet as of December 31, 2000 is derived from audited financial statements. Results for any interim period are not necessarily indicative of results for any other interim period or for the entire year.

Cash Equivalents, Marketable Securities and Concentration of Credit Risk

We consider all highly liquid investments with a maturity of three months or less at the date of purchase to be cash equivalents. The "Marketable securities" line item in the Consolidated Balance Sheets includes the interest receivable associated with all marketable securities. The "Other" adjustments line item in the Consolidated Statements of Cash Flows represents the accretion of the book value of certain debt securities. We place our cash and marketable debt securities with high-credit-quality financial institutions and in securities of the U.S. government and U.S. government agencies and U.S. corporations and, by policy, limit the amount of credit exposure in any one financial instrument. To date, we have not experienced credit losses on investments in these instruments.

The following is a summary of all available-for-sale securities. Estimated fair value is based upon quoted market prices for these or similar instruments.

(In thousands)

	Available-for-Sale Securities			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
June 30, 2001				
Securities of the U.S. Government and its agencies maturing:				
within 1 year	$20,255	$118	$ --	$20,373
between 1-3 years	356,183	2,370	(38)	358,515
U.S. corporate debt securities maturing:				
between 1-3 years	126,561	2,248	--	128,809
Total marketable debt securities	$502,999	$4,736	$ (38)	$507,697

As of June 30, 2001, there were no realized gains or losses on the sale of available-for-sale securities, as all securities liquidated prior to this date were held to maturity.

Revenue Recognition

Contract revenues from research and development arrangements are recognized based on the performance requirements of the contracts. Revenues from achievement of milestones are recognized when the funding party agrees that the scientific or clinical results stipulated in the agreement have been met. Deferred revenue arises principally due to timing of cash payments received under research and development contracts.

Our collaborative, humanization and patent licensing agreements with third parties provide for the payment of royalties to us based on net sales of the licensed product under the agreement. The agreements generally provide for royalty payments to us following completion of each calendar quarter or semi-annual period and royalty revenue is recognized when royalty reports are received from the third party. Non-refundable signing and licensing fees under collaborative and humanization agreements are recognized

over the period in which performance obligations are achieved. Non-refundable signing and licensing fees under patent rights and patent licensing agreements are recognized as revenue when there are no future performance obligations remaining with respect to such fees.

Net Income Per Share

In accordance with Financial Accounting Standards Board Statement No. 128, "Earnings Per Share" (FAS 128), basic and diluted net income per share amounts have been computed using the weighted average number of shares of common stock outstanding during the periods presented. Calculation of diluted net income per share also includes the dilutive effect of outstanding stock options, but does not include the dilutive effect of outstanding convertible notes because the assumed conversion of these notes would be anti-dilutive.

The following is a reconciliation of the numerators and denominators of the basic and diluted net income per share computations for the periods presented below:

(In thousands, except basic and diluted net income per share)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2001	2000	2001	2000
Numerator:				
Net income	$3,140	$5,022	$9,771	$5,791
Denominator:				
Basic net income per share - weighted-average shares	43,722	39,514	43,669	39,218
Dilutive potential common shares:				
Stock Options	2,870	3,748	2,667	3,968
Denominator for diluted net income per share	46,592	43,262	46,336	43,186
Basic net income per share	$0.07	$0.13	$0.22	$0.15
Diluted net income per share	$0.07	$0.12	$0.21	$0.13

Comprehensive Income

For the three months ended June 30, 2001 and 2000, total comprehensive income was $3.1 million and $5.3 million, respectively. For the six months ended June 30, 2001 and 2000, total comprehensive income was $13.9 million and $5.6 million, respectively. Total comprehensive income is comprised of net income and unrealized gains and losses on the Company's available-for- sale securities.

Derivative Instruments and Hedging Activities

In June 1998, the Financial Accounting Standards Board issued Statement No. 133 "Accounting for Derivative Instruments and Hedging Activities" (FAS 133), which was adopted January 1, 2001. The adoption of FAS 133 did not have an effect on the results of operations or the financial position of the Company because the Company does not hold or use derivatives.

Management Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the use of management's estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. For example, we have a policy of recording expenses for clinical trials based upon pro rating estimated total costs of a clinical trial over the estimated length of the clinical trial and the number of patients anticipated to be enrolled in the trial. Expenses related to each patient are recognized ratably beginning upon entry into the trial and over the course of the trial. In the event of early termination of a clinical trial, management accrues an amount based on its estimate of the remaining non-cancellable obligations associated with the winding down of the clinical trial. In addition, funded research is expensed on a straight-line basis over the period of the funding. Our estimates and assumptions could differ significantly from the amounts which may actually be incurred.

Research and Development Funding

In May 2001, the Company entered into a Collaboration Agreement with Exelixis, Inc. to provide $4.0 million in annual research funding for two or more years, and purchased a $30.0 million note, which is convertible after the first year of the collaboration into

shares of Exelixis common stock. For the three months ended June 30, 2001, the Company expensed approximately $0.3 million in funding under this commitment.

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

This Quarterly Report contains forward-looking statements which involve risks and uncertainties. The Company's actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include, but are not limited to those discussed in "Risk Factors" as well as those discussed elsewhere in this document and the Company's Annual Report on Form 10-K, filed with the Securities and Exchange Commission for the year ended December 31, 2000.

OVERVIEW

In general, we have a history of operating losses and may not achieve sustained profitability. Our expenses have generally exceeded revenues. As of June 30, 2001, we had an accumulated deficit of approximately $68.8 million. Our losses may increase because of the extensive resource commitments required to achieve regulatory approval and commercial success for any individual product. For example, over the next several years, we will incur substantial additional expenses as we continue to develop and manufacture our potential products, invest in new research areas and improve and expand our manufacturing, marketing and sales capabilities. Since we or our collaborative partners or licensees may not be able to successfully develop additional products, obtain required regulatory approvals, manufacture products at an acceptable cost and with appropriate quality, or successfully market such products with desired margins, we may never achieve sustained profitable operations. The amount of net losses and the time required to reach sustained profitability are highly uncertain. Although we have had some profitable reporting periods, we may be unable to achieve sustained profitability.

Our commitment of resources to the continued development of our products will require significant additional funds for development. Our operating expenses may also increase as some of our earlier stage potential products move into later stage clinical development, as additional potential products are selected as clinical candidates for further development, as we invest in additional manufacturing capacity, as we defend or prosecute our patents and patent applications, and as we invest in research or acquire additional technologies, product candidates or businesses.

In the absence of substantial revenues from new corporate collaborations or patent licensing or humanization agreements, significant royalties on sales of products licensed under our intellectual property rights, product sales or other uncertain sources of revenue, we will incur substantial operating losses.

Our revenues, expenses and operating results will likely fluctuate in future periods. Our revenues have varied in the past and will likely continue to fluctuate considerably from quarter to quarter and from year to year. As a result, our revenues in any period may not be predictive of revenues in any subsequent period. Our royalty revenues may be unpredictable and may fluctuate since they depend upon the seasonality of sales of licensed products, the existence of competing products, the marketing efforts of our licensees, potential reductions in royalties payable to us due to credits for prior payments to us, the timing of royalty reports, some of which are required quarterly and others semi-annually, our method of accounting for royalty revenues from our licensees, and our ability to successfully defend and enforce our patents. We receive royalty revenues on sales of the product Synagis. This product has higher sales in the fall and winter, which to date have resulted in much higher royalties paid to us in our first and second quarters than in other quarters. The seasonality of Synagis sales could contribute to fluctuation of our revenues from quarter to quarter.

Other revenue may also be unpredictable and may fluctuate due to the timing of payments of non-recurring licensing and signing fees, payments for manufacturing and clinical development services and payments for the achievement of milestones under new and existing collaborative, humanization, and patent licensing agreements. Revenue historically recognized under our prior agreements may not be an indicator of revenue from any future collaborations.

In addition, our expenses may be unpredictable and may fluctuate from quarter to quarter due to the timing of expenses, which may include payments owed by us and to us under collaborative agreements for reimbursement of expenses and which are reported under our policy during the quarter in which such expenses are reported to us or to our collaborative partners and agreed to by us or our partners.

RESULTS OF OPERATIONS

Three Months Ended June 30, 2001 and 2000

The Company's total revenues for the three months ended June 30, 2001 were $21.6 million compared to $20.4 million in the second quarter of 2000. Total revenues recognized under agreements with third parties were $12.7 million in the second quarter of 2001 compared to $15.9 million in the comparable period in 2000. Interest and other income was $9.0 million in the second quarter of 2001 compared to $4.5 million in the comparable period in 2000, reflecting the increased interest earned on our cash, cash equivalents and marketable securities balances primarily as a result of our public offering of common stock in the second half of 2000, which raised approximately $343.6 million in net proceeds.

Revenues under agreements with third parties of $12.7 million for the three months ended June 30, 2001 consisted principally of royalties, license maintenance fees, a signing and licensing fee and a milestone payment. In the second quarter of 2000, revenues of

$15.9 million under agreements with third parties consisted principally of royalties, signing and licensing fees, portions of upfront fees paid to PDL pursuant to humanization agreements, research and development reimbursement funding and license maintenance fees.

Total costs and expenses for the three months ended June 30, 2001 were $18.5 million compared with $15.3 million in the comparable period in 2000.

Research and development expenses for the three months ended June 30, 2001 were $12.2 million compared with $10.2 million in the year-earlier quarter. Research and development costs increased primarily due to the expansion of clinical development programs, including staff and support for both clinical development and manufacturing process development and payments to third parties related to research and development funding.

General and administrative expenses for the three months ended June 30, 2001 increased to $4.1 million from $2.9 million in the comparable period in 2000. These increases were primarily the result of expenses associated with managing and supporting the Company's expanding operations including pre-marketing expenses associated with our clinical development program.

Interest expense for the three months ended June 30, 2001 and 2000 was essentially unchanged at $2.3 million.

Six Months Ended June 30, 2001 and 2000

The Company's total revenues for the six months ended June 30, 2001 were $47.8 million compared to $35.9 million in the comparable period in 2000. Total revenues recognized under agreements with third parties were $29.4 million in the six months ended June 30, 2001 compared to $28.3 million in the comparable period in 2000. Interest and other income was $18.4 million in the six month period of 2001 compared to $7.5 million in the comparable period in 2000, reflecting the increased interest earned on our cash, cash equivalents and marketable securities balances primarily as a result of our public offering of common stock in the second half of 2000, which raised approximately $343.6 million in net proceeds.

Revenues under agreements with third parties of $29.4 million for the six months ended June 30, 2001 consisted principally of royalties, signing and licensing fees, milestone payments, portions of upfront fees paid to PDL pursuant to humanization agreements and license maintenance fees. In the comparable period in 2000, revenues of $28.3 million under agreements with third parties consisted principally of royalties, signing and licensing fees, portions of upfront fees paid to PDL pursuant to humanization agreements, research and development reimbursement funding, license maintenance fees and a milestone payment earned under a licensing agreement.

Total costs and expenses for the six months ended June 30, 2001 were $38.0 million compared with $30.1 million in the comparable period in 2000.

Research and development expenses for the six months ended June 30, 2001 were $25.9 million compared with $21.3 million in the year-earlier quarter. Research and development costs increased primarily due to the expansion of clinical development programs, including staff and support for both clinical development and manufacturing process development and payments to third parties related to manufacturing of certain potential products and research and development funding.

General and administrative expenses for the six months ended June 30, 2001 increased to $7.7 million from $5.3 million in the comparable period in 2000. These increases were primarily the result of expenses associated with managing and supporting the Company's expanding operations, including pre- marketing expenses associated with our clinical development program.

Interest expense for the six months ended June 30, 2001 was $4.5 million as compared to $3.5 million in the year earlier period, primarily due to the interest expense associated with our convertible subordinated notes issued on February 15, 2000.

LIQUIDITY AND CAPITAL RESOURCES

To date, we have financed our operations primarily through public and private placements of equity and debt securities, revenue under agreements with third parties and interest income on invested capital. At June 30, 2001, we had cash, cash equivalents and marketable securities in the aggregate of $645.8 million, compared to $661.2 million at December 31, 2000. The cash balance at June 30, 2001, reflects a reduction due to a $30 million loan to Exelixis, Inc. associated with our cancer target discovery collaboration announced in May 2001.

As set forth in the Consolidated Statements of Cash Flows, net cash provided by our operating activities was approximately $3.3 million and $9.5 million for the six months ended June 30, 2001 and 2000, respectively. The change was primarily due to the accretion of the book value of certain debt securities and other current assets.

As set forth in the Consolidated Statements of Cash Flows, net cash used in our investing activities for the six months ended June 30, 2001 was $291.9 as compared to net cash provided by our investing activities of $3.2 million in 2000. The change in 2001 was primarily the result of our reinvestment activities associated with the purchases of marketable securities and a convertible note.

As set forth in the Consolidated Statements of Cash Flows, net cash provided by our financing activities for the six months ended June 30, 2001 was $5.2 million compared to $165.1 million in 2000. The change in 2001 from 2000 was primarily the result of our sale of $150 million of convertible subordinated notes in February 2000.

Our future capital requirements will depend on numerous factors, including, among others, royalties from sales of products of third party licensees, including Synagis, Herceptin, Zenapax and Mylotarg; our ability to enter into additional collaborative, humanization and patent licensing arrangements; progress of product candidates in clinical trials; the ability of our licensees to obtain regulatory approval and successfully manufacture and market products licensed under our patents; the continued or additional support by our collaborative partners or other third parties of research and development efforts and clinical trials; investment in existing and new research and development programs; time required to gain regulatory approvals; resources we devote to manufacturing facilities; our ability to obtain and retain funding from third parties under collaborative arrangements; our continued development of internal marketing and sales capabilities; the demand for our potential products, if and when approved; potential acquisitions of technology, product candidates or businesses by us; and the costs of defending or prosecuting any patent opposition or litigation necessary to protect our proprietary technology. In order to develop and commercialize our potential products we may need to raise substantial additional funds through equity or debt financings, collaborative arrangements, the use of sponsored research efforts or other means. No assurance can be given that such additional financing will be available on acceptable terms, if at all, and such financing may only be available on terms dilutive to existing stockholders.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT

MARKET RISK

The Company maintains a non-trading investment portfolio of investment grade, highly liquid, debt securities which limits the amount of credit exposure to any one issue, issuer, or type of instrument. The Company does not use derivative financial instruments for speculative or trading purposes. The securities in the Company's investment portfolio are not leveraged and are classified as available for sale and therefore are subject to interest rate risk. The Company does not currently hedge interest rate exposure. As of June 30, 2001, there has been no material change in the Company's interest rate exposure from that described in the Company's Annual Report on Form 10-K for the year ended December 31, 2000.

PART II. OTHER INFORMATION

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

The Company's 2001 Annual Meeting of Stockholders was held on June 14, 2001 at the Company's principal offices in Fremont, California. Of the 43,664,717 shares of common stock outstanding as of the record date, 35,135,653 shares were present at the meeting or represented by proxy, representing approximately 80% of the total votes eligible to be cast.

At the meeting, the stockholders voted to re-elect the Class III members of the Corporation's Board of Directors as follows:

Nominee	For	Withheld
Jürgen Drews, M.D.	28,648,887	6,486,766
Laurence Jay Korn, Ph.D.	32,414,917	2,720,736
Max Link, Ph.D.	34,816,608	319,045

The stockholders also voted to approve an amendment to the Certificate of Incorporation to increase the number of authorized shares of Common Stock from 90,000,000 to 250,000,000 as follows:

For	Against	Abstentions
23,479,538	11,643,866	12,249

In addition, the stockholders voted to approve an amendment to the Company's 1999 Stock Option Plan to increase the number of shares of Common Stock reserved for issuance thereunder by 2,000,000 shares as follows:

For	Against	Abstentions
22,125,423	12,983,195	27,035

Lastly, the stockholders voted to ratify the appointment of Ernst & Young LLP as the Corporation's independent auditors for the fiscal year ending December 31, 2001 as follows:

For	Against	Abstentions
34,626,824	488,278	20,551

ITEM 5. OTHER INFORMATION - RISK FACTORS

Risk Factors

This Quarterly Report contains, in addition to historical information, forward-looking statements which involve risks and uncertainties. Our actual results may differ significantly from the results discussed in forward-looking statements. Factors that may cause such a difference include those discussed in the material set forth in this document and in our Annual Report on Form 10-K for the year ended December 31, 2000. Additional risks and uncertainties not presently known to us or that we currently see as immaterial may also impair our business. If any of these risks actually occurs, it could materially harm our business, financial condition or operating results.

We have a history of operating losses and may not achieve sustained profitability.

Our expenses have generally exceeded revenues. As of June 30, 2001, we had an accumulated deficit of approximately $ 68.8 million. Our losses may increase because of the extensive resource commitments required to achieve regulatory approval and commercial success for any individual product. For example, over the next several years, we will incur substantial additional expenses as we continue to develop and manufacture our potential products, invest in new research areas and improve and expand our manufacturing, marketing and sales capabilities. Since we or our collaborative partners or licensees may not be able to successfully develop additional products, obtain required regulatory approvals, manufacture products at an acceptable cost and with appropriate quality, or successfully market such products with desired margins, we may never achieve sustained profitable operations. The amount of net losses and the time required to reach sustained profitability are highly uncertain. We may be unable to achieve sustained profitability.

Our commitment of resources to the continued development of our products will require significant additional funds for development. Our operating expenses may also increase as:

- some of our earlier stage potential products move into later stage clinical development
- additional potential products are selected as clinical candidates for further development
- we invest in additional manufacturing capacity
- we defend or prosecute our patents and patent applications, and
- we invest in research or acquire additional technologies, product candidates or businesses.

In the absence of substantial revenues from new corporate collaborations or patent licensing or humanization agreements, significant royalties on sales of products licensed under our intellectual property rights, product sales or other uncertain sources of revenue, we will incur substantial operating losses.

Our revenues, expenses and operating results will likely fluctuate in future periods.

Our revenues have varied in the past and will likely continue to fluctuate considerably from quarter to quarter and from year to year. As a result, our revenues in any period may not be predictive of revenues in any subsequent period. Our royalty revenues may be unpredictable and may fluctuate since they depend upon:

- the seasonality of sales of licensed products
- the existence of competing products
- the marketing efforts of our licensees
- potential reductions in royalties payable to us due to credits for prior payments to us
- the timing of royalty reports, some of which are required quarterly and others semi-annually
- our method of accounting for royalty revenues from our licensees, and
- our ability to successfully defend and enforce our patents.

We receive royalty revenues on sales of the product Synagis. This product has higher sales in the fall and winter, which to date have resulted in much higher royalties paid to us in our first and second quarters than in other quarters. The seasonality of Synagis sales could contribute to fluctuation of our revenues from quarter to quarter.

Other revenue may also be unpredictable and may fluctuate due to the timing of payments of non-recurring licensing and signing fees, payments for manufacturing and clinical development services, and payments for the achievement of milestones under new and existing collaborative, humanization, and patent licensing agreements. Revenue historically recognized under our prior agreements may not be an indicator of non-royalty revenue from any future collaborations.

In addition, our expenses may be unpredictable and may fluctuate from quarter to quarter due to the timing of expenses, which may include payments owed by us and to us under collaborative agreements for reimbursement of expenses and which are reported under our policy during the quarter in which such expenses are reported to us or to our collaborative partners and agreed to by us or our partners.

Our humanization patents are being opposed and a successful challenge could limit our future revenues.

Most of our current revenues are related to our humanization patents. At an oral hearing in March 2000, the Opposition Division of the European Patent Office decided to revoke the broad claims of our first European humanization patent. We have appealed this decision. Until our appeal is resolved, we may be limited in our ability to collect royalties or to negotiate future licensing or collaborative research and development arrangements based on this and our other humanization patents. Moreover, if our appeal is unsuccessful, our ability to collect royalties on European sales of antibodies humanized by others would depend on the scope and validity of our second European patent, whether the antibodies are manufactured in a country outside of Europe where they are covered by one of our patents, and in that case the terms of our license agreements with respect to that situation. Also, the Opposition Division's decision could encourage challenges of our related patents in other jurisdictions, including the U.S. This decision may lead some of our licensees to stop making royalty payments or lead potential licensees not to take a license, either of which might result in us initiating formal legal actions to enforce our rights under our humanization patents. In such a situation, a likely defensive strategy to our action would be to challenge our patents in that jurisdiction. During the appeals process with respect to our first European patent, if we were to commence an infringement action to enforce that patent, such an action would likely be stayed until the appeal is decided by the European Patent Office. As a result, we may not be able to successfully enforce our rights under our European or related U.S. and Japanese patents. Eight notices of opposition have been filed with respect to our second European antibody humanization patent and we recently filed our response to the European Patent Office. Also, three opposition statements have been filed with the Japanese Patent Office with respect to our humanization patent issued in Japan in late 1998. We received a notice from the Japanese Patent Office supporting one aspect of the position of the opponents to our Japanese humanization patent in the Japanese Patent Office opposition proceeding. Under Japanese Patent Office procedures, until receiving this notice, we had not been afforded an opportunity to respond to arguments made by the opponents to this patent. We are now preparing a response to file with the Japanese Patent Office.

We intend to vigorously defend the European patents and the Japanese patent in these proceedings; however, we may not prevail in the opposition proceedings or any litigation contesting the validity of these patents. If our appeal with respect to our first European patent is unsuccessful or if the outcome of the other European or Japanese opposition proceedings or any litigation involving our antibody humanization patents were to be unfavorable, our ability to collect royalties on existing licensed products and to license our patents relating to humanized antibodies may be materially harmed. In addition, these proceedings or any other litigation to protect our intellectual property rights or defend against infringement claims by others could result in substantial costs and diversion of management's time and attention, which could harm our business and financial condition.

If we are unable to protect our patents and proprietary technology, we may not be able to compete successfully.

Our pending patent applications may not result in the issuance of valid patents or our issued patents may not provide competitive advantages. Also, our patent protection may not prevent others from developing competitive products using related or other technology.

A number of companies, universities and research institutions have filed patent applications or received patents in the areas of antibodies and other fields relating to our programs. Some of these applications or patents may be competitive with our applications or contain material that could prevent the issuance of patents to us or result in a significant reduction in the scope of our issued patents.

The scope, enforceability and effective term of patents can be highly uncertain and often involve complex legal and factual questions. No consistent policy has emerged regarding the breadth of claims in biotechnology patents, so that even issued patents may later be modified or revoked by the relevant patent authorities or courts. Moreover, the issuance of a patent in one country does not assure the issuance of a patent with similar claims in another country, and claim interpretation and infringement laws vary among countries, so we are unable to predict the extent of patent protection in any country.

In addition to seeking the protection of patents and licenses, we also rely upon trade secrets, know-how and continuing technological innovation which we seek to protect, in part, by confidentiality agreements with employees, consultants, suppliers and licensees. If these agreements are not honored, we might not have adequate remedies for any breach. Additionally, our trade secrets might otherwise become known or patented by our competitors.

We may require additional patent licenses in order to manufacture or sell our potential products.

Other companies, universities and research institutions may obtain patents that could limit our ability to use, import, manufacture, market or sell our products or impair our competitive position. As a result, we might be required to obtain licenses from others before we could continue using, importing, manufacturing, marketing, or selling our products. We may not be able to obtain required licenses on terms acceptable to us, if at all. If we do not obtain required licenses, we may encounter significant delays in product development while we redesign potentially infringing products or methods or may not be able to market our products at all.

Celltech has been granted a European patent covering humanized antibodies, which we have opposed. At an oral hearing in September 2000, the Opposition Division of the European Patent Office decided to revoke this patent. Celltech may elect to appeal that decision. Also, Celltech has a pending divisional patent application in Europe, which is currently drafted with broad claims directed towards humanized antibodies. We cannot predict whether Celltech will be able to successfully appeal the decision of the Opposition Division with respect to their first European patent or whether they will be able to obtain the grant of a patent from the pending application with claims broad enough to generally cover humanized antibodies. Celltech has also been issued a corresponding U.S. patent that contains claims that may be considered broader in scope than their first European patent. We have entered into an agreement with Celltech providing each company with the right to obtain nonexclusive licenses for up to three antibody targets under the other company's humanization patents. Nevertheless, if our SMART antibodies were covered by Celltech's European or U.S. patents and if we were to need more than the three licenses under those patents currently available to us under the agreement, we would be required to negotiate additional licenses under those patents or to significantly alter our processes or products. We might not be able to successfully alter our processes or products to avoid conflict with these patents or to obtain the required additional licenses on commercially reasonable terms, if at all.

In addition, if the Celltech U.S. patent or any related patent applications conflict with our U.S. patents or patent applications, we may become involved in proceedings to determine which company was the first to invent the products or processes contained in the conflicting patents. These proceedings could be expensive, last several years and either prevent issuance of additional patents to us relating to humanization of antibodies or result in a significant reduction in the scope or invalidation of our patents. Any limitation would reduce our ability to negotiate or collect royalties or to negotiate future collaborative research and development agreements based on these patents.

Lonza Biologics, Inc. has a patent issued in Europe to which we do not have a license that may cover a process that we use to produce our potential products. In addition, we do not have a license to an issued U.S. patent assigned to Stanford University and Columbia University, which may cover a process we use to produce our potential products. We have been advised that an exclusive license has been previously granted to a third party under this patent. If our processes were covered by either of these patents, we might be required to obtain licenses or to significantly alter our processes or products. We might not be able to successfully alter our processes or products to avoid conflicts with these patents or to obtain licenses on acceptable terms.

If we cannot successfully complete our clinical trials, we will be unable to obtain regulatory approvals required to market our products.

To obtain regulatory approval for the commercial sale of any of our potential products or to promote these products for expanded indications, we must demonstrate through preclinical testing and clinical trials that each product is safe and effective for use in indications for which approval is requested. We have conducted only a limited number of clinical trials to date. Moreover, we have a relatively large number of potential products in clinical development. We may not be able to successfully commence and complete all of our planned clinical trials without significant additional resources and expertise. Additionally, regulatory review of our clinical trial protocols may cause us in some cases to delay or abandon our planned clinical trials. Our potential inability to commence or continue clinical trials, to complete the clinical trials on a timely basis or to demonstrate the safety and efficacy of our potential products, further adds to the uncertainty of regulatory approval for our potential products.

Larger and later stage clinical trials may not produce the same results as early stage trials. Many companies in the pharmaceutical and biotechnology industries, including our company, have suffered significant setbacks in clinical trials, including advanced clinical trials, even after promising results had been obtained in earlier trials.

Even when a drug candidate shows indications of efficacy in a clinical trial, it may be impossible to further develop or receive regulatory approval for the drug if it causes an unacceptable incidence or severity of side effects, or further development may be slowed down by the need to find dosing regimens that do not cause such side effects. For example, while Nuvion has shown biological activity in some patients in the Phase I/II trial for psoriasis, it has also caused a level of side effects that would be unacceptable in this patient population. Enrollment in this trial currently is suspended and we may choose not to continue this trial or to further develop Nuvion for psoriasis. As a second example, Remitogen (SMART 1D10 Antibody) produced partial clinical responses in some B-cell lymphoma patients but at some dose levels there were significant side effects. Hence, we are conducting a Phase II trial of Remitogen to determine a useful dosing regimen.

Our clinical trial strategy may increase the risk of clinical trial difficulties.

Research, preclinical testing and clinical trials may take many years to complete and the time required can vary depending on the indication being addressed and the nature of the product. We may at times elect to use aggressive clinical strategies in order to advance potential products through clinical development as rapidly as possible. For example, we may commence clinical trials without conducting preclinical animal efficacy testing where an appropriate animal efficacy testing model does not exist, or we may conduct later stage trials based on limited early stage data. As a result, we anticipate that only some of our potential products may show safety and efficacy in clinical trials and some may encounter difficulties or delays during clinical development.

For example, we have entered Zamyl (SMART M195 Antibody) into a Phase III clinical trial in acute myelogenous leukemia with a clinical regimen that has not been tested previously with this antibody in combination with chemotherapy. Results from our prior Phase II and Phase II/III studies showed only a limited number of complete and partial remissions using the antibody without concomitant chemotherapy. In addition, based in part on the nature and severity of the disease, we initiated the Phase III study without a meeting with the FDA or European regulatory authorities to discuss the protocol and its adequacy to support approval of Zamyl. This study may not be successful, or the FDA or European regulatory authorities may not agree that the study will be adequate to obtain regulatory approval, even if the study is successful.

We may be unable to enroll sufficient patients to complete our clinical trials.

The rate of completion of our clinical trials, and those of our collaborators, is significantly dependent upon the rate of patient enrollment. Patient enrollment is a function of many factors, including:

- the size of the patient population
- perceived risks and benefits of the drug under study
- availability of competing therapies
- availability of clinical drug supply
- availability of clinical trial sites
- design of the protocol
- proximity of and access by patients to clinical sites
- patient referral practices of physicians
- eligibility criteria for the study in question, and
- efforts of the sponsor of and clinical sites involved in the trial to facilitate timely enrollment.

We may have difficulty obtaining sufficient patient enrollment or clinician support to conduct our clinical trials as planned, and we may need to expend substantial additional funds to obtain access to resources or delay or modify our plans significantly. These considerations may lead us to consider the termination of ongoing clinical trials or development of a product for a particular indication.

Our revenues from licensed technologies depend on the efforts and successes of our licensees.

In those instances where we have licensed rights to our technologies, the product development and marketing efforts and successes of our licensees will determine the amount and timing of royalties we may receive, if any. We have no assurance that any licensee will successfully complete the product development, regulatory and marketing efforts required to sell products. The success of products sold by licensees will be affected by competitive products, including potential competing therapies that are marketed by the licensee or others.

If our collaborations are not successful, we may not be able to effectively develop and market some of our products.

We have collaborative agreements with several pharmaceutical and other companies to develop, manufacture and market Zenapax and some of our potential products. In some cases, we are relying on our collaborative partners to manufacture such products, to conduct clinical trials, to compile and analyze the data received from these trials, to obtain regulatory approvals and, if approved, to market these licensed products. As a result, we may have little or no control over the manufacturing, development and marketing of these potential products and little or no opportunity to review clinical data prior to or following public announcement.

Our collaborative agreements can generally be terminated by our partners on short notice. A collaborator may terminate its agreement with us or separately pursue alternative products, therapeutic approaches or technologies as a means of developing treatments for the diseases targeted by us or our collaborative effort. Even if a collaborator continues its contributions to the arrangement, it may nevertheless determine not to actively pursue the development or commercialization of any resulting products. In these circumstances, our ability to pursue potential products could be severely limited.

Continued funding and participation by collaborative partners will depend on the timely achievement of our research and development objectives, the retention of key personnel performing work under those agreements and on each collaborative partner's own financial, competitive, marketing and strategic considerations. Such considerations include:

- the commitment of management of the collaborative partners to the continued development of the licensed products or technology
- the relationships among the individuals responsible for the implementation and maintenance of the collaborative efforts, and
- the relative advantages of alternative products or technology being marketed or developed by the collaborators or by others, including their relative patent and proprietary technology positions, and their ability to manufacture potential products successfully.

Our ability to enter into new collaborations and the willingness of our existing collaborators to continue development of our potential products depends upon, among other things, our patent position with respect to such products. If we are unable to

successfully maintain our patents we may be unable to collect royalties on existing licensed products or enter into additional collaborations and agreements.

Our lack of experience in sales, marketing and distribution may hamper market introduction and acceptance of our products.

We intend to market and sell a number of our products either directly or through sales and marketing partnership arrangements with collaborative partners. To market products directly, we must either establish a marketing group and direct sales force or obtain the assistance of another company. We may not be able to establish marketing, sales and distribution capabilities or succeed in gaining market acceptance for our products. If we were to enter into co-promotion or other marketing arrangements with pharmaceutical or biotechnology companies, our revenues would be subject to the payment provisions of these arrangements and dependent on the efforts of third parties.

Manufacturing difficulties could delay commercialization of our products.

Of the products that we currently have in clinical development, Hoffmann-La Roche Inc. and its affiliates (Roche) are responsible for manufacturing Zenapax, GlaxoSmithKline is responsible for manufacturing the humanized anti-IL-4 antibody and Scil Biomedicals is responsible for manufacturing the SMART Anti-L-Selectin Antibody. We are responsible for manufacturing our other products for our own development. We intend to continue to manufacture potential products for use in preclinical and clinical trials using our manufacturing facility in accordance with standard procedures that comply with appropriate regulatory standards. The manufacture of sufficient quantities of antibody products that comply with these standards is an expensive, time-consuming and complex process and is subject to a number of risks that could result in delays. We and our collaborative partners have experienced some manufacturing difficulties. Product supply interruptions could significantly delay clinical development of our potential products, reduce third party or clinical researcher interest and support of proposed clinical trials, and possibly delay commercialization and sales of these products. Manufacturing difficulties can even interrupt the supply of marketed products, thereby reducing revenues and risking loss of market share. For example, in December 1999, Roche received a warning letter from the FDA regarding deficiencies in the manufacture of various products. Although the letter primarily related to products other than Zenapax, Roche has also experienced difficulties in the manufacture of Zenapax leading to interruptions in supply. If future manufacturing difficulties arise and are not corrected in a timely manner, Zenapax supplies could be interrupted, which could cause a delay or termination of our clinical trials of Zenapax in autoimmune disease and could force Roche to withdraw Zenapax from the market temporarily or permanently, resulting in loss of revenue to us. These occurrences could impair our competitive position.

We do not have experience in manufacturing commercial supplies of our potential products, nor do we currently have sufficient facilities to manufacture our potential products on a commercial scale. To obtain regulatory approvals and to create capacity to produce our products for commercial sale at an acceptable cost, we will need to improve and expand our existing manufacturing capabilities. We currently plan to improve our current manufacturing plant in order to manufacture initial commercial supplies of certain products, including at least Zamyl in the event that the Phase III trial of that antibody is successful. Our ability to file for, and to obtain, marketing approval for Zamyl, as well as the timing of such filing, will depend on our ability to successfully improve our current manufacturing plant. We may be unable to do so, or to obtain regulatory approval or to successfully produce commercial supplies on a timely basis. Failure to do so could delay commercialization of this product.

In addition, we plan to construct a new commercial manufacturing plant. When we implement these plans we will incur substantial costs. Any construction or other delays could impair our ability to obtain necessary regulatory approvals and to produce adequate commercial supplies of our potential products on a timely basis. Failure to do so could delay commercialization of some of our products and could impair our competitive position.

Our revenue may be adversely affected by competition and rapid technological change.

Potential competitors have developed and are developing human and humanized antibodies or other compounds for treating autoimmune and inflammatory diseases, transplantation, asthma and cancers. In addition, a number of academic and commercial organizations are actively pursuing similar technologies, and several companies have developed or may develop technologies that may compete with our SMART antibody technology. Competitors may succeed in more rapidly developing and marketing technologies and products that are more effective than our products or that would render our products or technology obsolete or noncompetitive. Our collaborative partners may also independently develop products that are competitive with products that we have licensed to them. This could reduce our revenues under our agreements with these partners.

Any product that we or our collaborative partners succeed in developing and for which regulatory approval is obtained must then compete for market acceptance and market share. The relative speed with which we and our collaborative partners can develop products, complete the clinical testing and approval processes, and supply commercial quantities of the products to the market compared to competitive companies will affect market success. In addition, the amount of marketing and sales resources and the effectiveness of the marketing used with respect to a product will affect its marketing success. For example, Novartis, which has a significant marketing and sales force directed to the transplantation market, has received approval to market Simulect, a product competitive with Zenapax, in the U.S. and Europe. Recently, Novartis acquired a significant interest in Roche. We cannot predict the impact, if any, that this relationship may have on Roche's efforts to market Zenapax.

We may be unable to obtain or maintain regulatory approval for our products.

The manufacturing, testing and marketing of our products are subject to regulation by numerous governmental authorities in the U.S. and other countries. In the U.S., pharmaceutical products are subject to rigorous FDA regulation. Additionally, other federal,

state and local regulations govern the manufacture, testing, clinical and nonclinical studies to assess safety and efficacy, approval, advertising and promotion of pharmaceutical products. The process of obtaining approval for a new pharmaceutical product or for additional therapeutic indications within this regulatory framework requires a number of years and the expenditure of substantial resources. Companies in the pharmaceutical and biotechnology industries, including us, have suffered significant setbacks in various stages of clinical trials, even in advanced clinical trials after promising results had been obtained in earlier trials.

In addition to the requirement for FDA approval of each pharmaceutical product, each pharmaceutical product manufacturing facility must be registered with, and approved by, the FDA. The manufacturing and quality control procedures must conform to rigorous guidelines in order to receive FDA approval. Pharmaceutical product manufacturing establishments are subject to inspections by the FDA and local authorities as well as inspections by authorities of other countries. To supply pharmaceutical products for use in the U.S., foreign manufacturing establishments must comply with these FDA approved guidelines. These foreign manufacturing establishments are subject to periodic inspection by the FDA or by corresponding regulatory agencies in these countries under reciprocal agreements with the FDA. Moreover, pharmaceutical product manufacturing facilities may also be regulated by state, local and other authorities.

For the marketing of pharmaceutical products outside the U.S., we and our collaborative partners are subject to foreign regulatory requirements and, if the particular product is manufactured in the U.S., FDA and other U.S. export provisions. Requirements relating to the manufacturing, conduct of clinical trials, product licensing, promotion, pricing and reimbursement vary widely in different countries. Difficulties or unanticipated costs or price controls may be encountered by us or our licensees or marketing partners in our respective efforts to secure necessary governmental approvals. This could delay or prevent us, our licensees or our marketing partners from marketing potential pharmaceutical products.

Both before and after approval is obtained, a biologic pharmaceutical product, its manufacturer and the holder of the BLA for the pharmaceutical product are subject to comprehensive regulatory oversight. The FDA may deny a BLA if applicable regulatory criteria are not satisfied. Moreover, even if regulatory approval is granted, such approval may be subject to limitations on the indicated uses for which the pharmaceutical product may be marketed. Further, marketing approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems with the pharmaceutical product occur following approval. In addition, under a BLA, the manufacturer continues to be subject to facility inspection and the applicant must assume responsibility for compliance with applicable pharmaceutical product and establishment standards. Violations of regulatory requirements at any stage may result in various adverse consequences, which may include, among other adverse actions, withdrawal of the previously approved pharmaceutical product or marketing approvals and/or the imposition of criminal penalties against the manufacturer and/or BLA holder.

Manufacturing changes may result in delays in obtaining regulatory approval or marketing for our products.

Manufacturing of antibodies for use as therapeutics in compliance with regulatory requirements is complex, time-consuming and expensive. If we make changes in the manufacturing process, we may be required to demonstrate to the FDA and corresponding foreign authorities that the changes have not caused the resulting drug material to differ significantly from the drug material previously produced. This is particularly important if we want to rely on results of prior preclinical studies and clinical trials performed using the previously produced drug material. Depending upon the type and degree of differences between the newer and older drug material, we may be required to conduct additional animal studies or human clinical trials to demonstrate that the newly produced drug material is sufficiently similar to the previously produced drug material. We have made manufacturing changes and are likely to make additional manufacturing changes for the production of our products currently in clinical development. These manufacturing changes could result in delays in development or regulatory approvals or in reduction or interruption of commercial sales and could impair our competitive position.

Our business may be harmed if we cannot obtain sufficient quantities of raw materials.

We depend on outside vendors for the supply of raw materials used to produce our product candidates. Once a supplier's materials have been selected for use in our manufacturing process, the supplier in effect becomes a sole or limited source of that raw material due to regulatory compliance procedures. If the third party suppliers were to cease production or otherwise fail to supply us with quality raw materials and we were unable to contract on acceptable terms for these services with alternative suppliers, our ability to produce our products and to conduct preclinical testing and clinical trials of product candidates would be adversely affected. This could impair our competitive position.

If we do not attract and retain key employees, our business could be impaired.

To be successful we must retain our qualified clinical, manufacturing, scientific and management personnel. Because we are located in a high technology area, we face competition for personnel from other companies, academic institutions, government entities and other organizations. We are currently conducting a search for several senior management personnel. If we are unsuccessful in filling these positions or retaining qualified personnel, our business could be impaired.

We may be subject to product liability claims, and our insurance coverage may not be adequate to cover these claims.

We face an inherent business risk of exposure to product liability claims in the event that the use of products during research and development efforts or after commercialization results in adverse effects. This risk will exist even with respect to any products that receive regulatory approval for commercial sale. While we have obtained liability insurance for our products, it may not be sufficient to satisfy any liability that may arise. Also, adequate insurance coverage may not be available in the future at acceptable cost, if at all.

We may incur significant costs in order to comply with environmental regulations or to defend claims arising from accidents involving the use of hazardous materials.

We are subject to federal, state and local laws and regulations governing the use, discharge, handling and disposal of materials and wastes used in our operations. As a result, we may be required to incur significant costs to comply with these laws and regulations. We cannot eliminate the risk of accidental contamination or injury from these materials. In the event of such an accident, we could be held liable for any resulting damages and incur liabilities which exceed our resources. In addition, we cannot predict the extent of the adverse effect on our business or the financial and other costs that might result from any new government requirements arising out of future legislative, administrative or judicial actions.

Changes in the U.S. and international health care industry could adversely affect our revenues.

The U.S. and international health care industry is subject to changing political, economic and regulatory influences that may significantly affect the purchasing practices and pricing of pharmaceuticals. Cost containment measures, whether instituted by health care providers or imposed by government health administration regulators or new regulations, could result in greater selectivity in the purchase of drugs. As a result, third-party payors may challenge the price and cost effectiveness of our products. In addition, in many major markets outside the U.S., pricing approval is required before sales can commence. As a result, significant uncertainty exists as to the reimbursement status of approved health care products.

We may not be able to obtain or maintain our desired price for our products. Our products may not be considered cost effective relative to alternative therapies. As a result, adequate third-party reimbursement may not be available to enable us to maintain prices sufficient to realize an appropriate return on our investment in product development. Also, the trend towards managed health care in the U.S. and the concurrent growth of organizations such as health maintenance organizations, as well as legislative proposals to reform health care or reduce government insurance programs, may all result in lower prices, reduced reimbursement levels and diminished markets for our products. These factors will also affect the products that are marketed by our collaborative partners.

Our common stock price is volatile and an investment in our company could decline in value.

Market prices for securities of biotechnology companies, including ourselves, have been highly volatile so that investment in our securities involves substantial risk. Additionally, the stock market from time to time has experienced significant price and volume fluctuations that may be unrelated to the operating performance of particular companies. The following are some of the factors that may have a significant effect on the market price of our common stock:

- developments or disputes as to patent or other proprietary rights
- disappointing sales of approved products
- approval or introduction of competing products and technologies
- results of clinical trials
- failures or unexpected delays in obtaining regulatory approvals or FDA advisory panel recommendations
- delays in manufacturing or clinical trial plans
- fluctuations in our operating results
- disputes or disagreements with collaborative partners
- market reaction to announcements by other biotechnology or pharmaceutical companies
- announcements of technological innovations or new commercial therapeutic products by us or our competitors
- initiation, termination or modification of agreements with our collaborative partners
- loss of key personnel
- litigation or the threat of litigation
- public concern as to the safety of drugs developed by us
- sales of our common stock held by collaborative partners or insiders
- comments and expectations of results made by securities analysts, and
- general market conditions.

If any of these factors causes us to fail to meet the expectations of securities analysts or investors, or if adverse conditions prevail or are perceived to prevail with respect to our business, the price of the common stock would likely drop significantly. A significant

drop in the price of a company's common stock often leads to the filing of securities class action litigation against the company. This type of litigation against us could result in substantial costs and a diversion of management's attention and resources.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

a. Exhibits

10.1 Collaboration Agreement between the Company and Exelixis, Inc., a Delaware corporation dated May 22, 2001 (with certain confidential portions deleted and marked by notation indicating such deletion).

10.2 Convertible Note between the Company and Exelixis, Inc., a Delaware corporation dated May 22, 2001.

10.3 Note Purchase Agreement between the Company and Exelixis, Inc., a Delaware corporation dated May 22, 2001.

10.4 Lease Agreement between the Company and St. Paul Properties, Inc., a Delaware corporation, dated May 31, 2001.

10.5 Lease Agreement between the Company and John Arrillaga Survivor's Trust and the Richard T. Peery Separate Property Trust, a California general partnership, dated June 28, 2001.

b. Reports on Form 8-K filed during the quarter ended June 30, 2001.

None

SIGNATURES

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

Dated: August 10, 2001

PROTEIN DESIGN LABS, INC.
(Registrant)

By: /s/ Laurence Jay Korn

Laurence Jay Korn
Chief Executive Officer, Chairperson of the Board of Directors
(Principal Executive Officer)

By: /s/ Robert Kirkman

Robert Kirkman
Vice President, Business Development and Corporate Communications
(Principal Accounting Officer)

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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Exhibit 10.1

COLLABORATION AGREEMENT

THIS COLLABORATION AGREEMENT (the "Agreement") is dated as of May 22, 2001 (the "Effective Date") by and between **Exelixis, Inc.,** a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 ("EXEL"), and **Protein Design Labs, Inc.,** a Delaware corporation having its principal place of business at 34801 Campus Drive, Fremont, California 94555-3606 ("PDL"). EXEL and PDL are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recitals

A. PDL has expertise and capability in developing antibodies, in particular humanized antibodies, as pharmaceuticals.

B. EXEL has expertise and proprietary technology relating to drug discovery focused particularly on genetic model systems, genomics and computational biology and is applying such technology to discover and validate targets and products for drug discovery in a variety of disease areas.

C. PDL and EXEL desire to establish a collaboration to utilize the technology and expertise of PDL and EXEL to identify and characterize targets for the treatment of cancer and precancerous conditions, controlling cell growth, apoptosis, and proliferation, to generate antibodies directed against such targets, and to develop and commercialize novel antibody products for diagnostic, prophylactic and therapeutic uses.

Now, Therefore, the Parties agree as follows:

1. Definitions

The following terms shall have the following meanings as used in this Agreement:

1. **"Affiliate"** means, with respect to a particular Party, a person, corporation, partnership, or other entity that controls, is controlled by, or is under common control with such Party. For the purposes of the definition in this Section 1.1, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.
2. **"Antibody"** means a Humanized Antibody or Precursor Antibody.
3. **"Antibody Inventions"** means an Invention directed to Antibodies, including without limitation, composition of matter, methods of manufacture, methods of use, formulations, dosing regimens, etc.
4. **"Antibody Target"** means [*].
5. **"Antibody Target Candidate"** means [*].
6. **"BLA"** means a Biologics License Application as defined in the current Federal Food, Drug and Cosmetic Act, and applicable regulations promulgated thereunder by the FDA or the equivalent application to the equivalent agency of any other regulatory jurisdiction, as amended from time to time during the term of this Agreement.
7. **"Co-Funded Product"** means a Product for which EXEL has made an effective election to co-fund pursuant to Section 5.1 and which has not ceased to be a Co-Funded Product pursuant to Section 5.9.
8. **"Collaboration"** means all of the research activities performed by, or on behalf of, EXEL or PDL during the Research Term pursuant to the Research Plan, through the stage of evaluation of Precursor Antibodies.
9. **"Combination Product"** means any product containing both (i) substantially all of at least one variable region of an Antibody, and (ii) one or more other therapeutically active ingredients.
10. **"Commercialization Plan"** shall have the meaning set forth in Section 3.4(b).
11. **"Controlled"** means, with respect to all or any portion of any gene, protein, compound, material, Information or intellectual property right, that the Party owns or has a license to such gene, protein, compound, material, Information or intellectual property right and has the ability to grant to the other Party access, a license or a sublicense (as applicable) to such gene, protein, compound, material, Information or intellectual property right as provided for herein without violating the terms of any agreement or other arrangements with any Third Party existing at the time such Party would be first required hereunder to grant the other Party such access, license or sublicense.

12. **"Cost of Goods Sold"** means [*].

13. **"Cost of Manufacture"** means [*].

14. **"Development"** means those activities undertaken with respect to a Product that are directed toward obtaining Regulatory Approval and the pre-marketing, marketing research, marketing and sale of such Product, including without limitation, humanization, cell line optimization, pre-clinical testing and toxicology studies, human clinical trials, formulation, bulk production, fill/finish, manufacturing process development, manufacturing scale-up costs and validation, qualification and certification costs and preparation of regulatory filings.

15. **"Development Plan"** means the plan describing the Development intended to be conducted for a given Co-Funded Product, including an estimated schedule and budget, as such plan may be amended by the relevant Joint Development Committee from time to time.

16. **"Development Costs"** means [*].

17. **"Diligent Efforts"** means the carrying out of obligations or tasks in a sustained manner consistent with the efforts a Party devotes to a product or a research, development or marketing project of similar market potential, profit potential or strategic value resulting from its own research efforts, based on conditions then prevailing and taking into account its relative risk profile, time to market, and other factors considered in portfolio management. Diligent Efforts requires that the Party: (i) promptly assign responsibility for such obligations to specific employee(s) who monitor such progress on an on-going basis, (ii) set and consistently seek to achieve specific and meaningful objectives for carrying out such obligations, and (iii) allocate resources designed to advance progress with respect to such objectives.

18. **"Drug Approval Application"** means an application for Regulatory Approval required before commercial sale of a Product as a pharmaceutical product in a regulatory jurisdiction.

19. **"EXEL Diagnostic Product"** means [*].

20. **"EXEL Know-How"** means all Information Controlled by EXEL during the term of the Agreement that is necessary or reasonably useful for PDL (a) to fulfill its obligations under the Research Plan, or (b) to research, develop, use, import, manufacture, market or sell Antibodies or Products, but excluding the EXEL Patents.

21. **"EXEL Patents"** means all (i) unexpired letters patent (including inventor's certificates) which have not been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period, including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, renewal, patent of addition or any like filing thereof and (ii) pending applications for letters patent, including without limitation any continuation, division, or continuation-in-part thereof and any provisional applications Controlled by EXEL related to Targets or Antibodies, including the identification and generation of Antibody Target Candidates and Antibody Targets for use in identifying and generating Antibodies, including but not limited to issued patents and pending applications that claim the composition of matter, manufacture, import or use of a Target, Antibody Target Candidate, Antibody Target, Antibody or Product, which are filed prior to or during the term of this Agreement in the United States or any foreign jurisdiction. "EXEL Patents" shall not include Joint Patents or PDL Patents or, after assignment to PDL, Antibody Patents.

22. **"EXEL Products"** means those Products which previously were Co-Funded Products, but which EXEL has assumed responsibility for Development and commercialization as described in Section 5.9(c).

23. **"First Commercial Sale"** means the first sale of the applicable Product to a Third Party following Regulatory Approval of the Product in the country where sold.

24. **"Humanized Antibody"** means [*] pursuant to this Agreement by [*]. The term "Humanized Antibody" shall include, without limitation [*].

25. **"Independent Research"** means [*].

26. **"IND"** means an Investigational New Drug Application as defined in the current Federal Food, Drug and Cosmetic Act and applicable regulations promulgated thereunder by the FDA or the equivalent application to the equivalent agency in any other regulatory jurisdiction, as amended from time to time during the term of this Agreement, and any equivalent application or filing for diagnostics or medical devices.

27. **"Information"** means information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, including without limitation, databases, inventions, practices, methods, techniques, specifications, formulations, formulae, knowledge, know-how, skill, experience, test data including pharmacological, biological, chemical, biochemical, toxicological and clinical test data, analytical and quality control data, stability data, studies and procedures, and patent and other legal information or descriptions.

28. **"Inventions"** means any and all inventions, results, know-how and other Information, and all intellectual property relating thereto, made, discovered or developed by one or more Parties and their employees or agents (including, without limitation, consultants or contractors who have assigned rights to inventions to a Party) pursuant to work performed under the Collaboration or in the course of developing a Pre-Opt-In Product or developing or marketing a Co-Funded Product.

29. **"Joint Inventions"** means any and all Inventions (other than Antibody Inventions) made jointly by employees or agents of both Parties (including, without limitation, consultants or contractors who have assigned rights to inventions to a Party), as determined in accordance with United States patent laws.

30. **"Joint Patents"** means all (i) unexpired letters patent (including inventor's certificates) which have not been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period, including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, renewal, patent of addition or any like filing thereof, and (ii) pending applications for letters patent, including without limitation any continuation, division, or continuation-in-part thereof and any provisional applications claiming Joint Inventions, which are filed during the term of this Agreement in the United States or any foreign jurisdiction. "Joint Patents" shall not include EXEL Patents or PDL Patents or Antibody Patents.

31. **"Model System Targets"** means [*].

32. **"Net Sales"** means [*].

    In the case of Combination Products for which a Product and each of the other therapeutically active ingredients contained in the Combination Product have established market prices when sold separately, Net Sales shall be determined by multiplying the Net Sales for each such Combination Product by a fraction, the numerator of which shall be the established market price for the Product(s) contained in the Combination Product, and the denominator of which shall be the sum of the established market prices for the Product(s) plus the other active ingredients contained in the Combination Product. When such separate market prices are not established, then the Parties shall negotiate in good faith to determine the method of calculating Net Sales for Combination Products.

    If PDL, its Affiliates or sublicensees receive non-cash consideration for any Product sold or otherwise transferred to a Third Party, the fair market value of such non-cash consideration on the date of the transfer as known to PDL, or as reasonably estimated by PDL if unknown, shall be included in the definition of Net Sales. EXEL shall have a right to review the basis of such determination and upon written notice, audit such estimates as provided in Section 9.16.

33. **"Oncology Screens"** shall have the meaning [*].

34. **"Opt-In Period"** shall have the meaning set forth in Section 5.1.

35. **"Patents"** means EXEL Patents, PDL Patents and/or Joint Patents as the context requires.

36. **"PDL Diagnostic Product"** means a product that is being or has been developed for [*] for use with a [*].

37. **"PDL Know-How"** means all Information Controlled by PDL during the term of the Agreement that is necessary or reasonably useful for EXEL to (a) fulfill its obligations under the Research Plan, or (b) develop, import, use, manufacture, market or sell EXEL Products, but excluding the PDL Patents and excluding all Information Controlled by PDL that relates to antibodies other than EXEL Products (including, without limitation, general methods for the humanization or manufacture of antibodies), except to the extent the Parties agree pursuant to Section 5.9(c).

38. **"PDL Patents"** means all (i) unexpired letters patent (including inventor's certificates) which have not been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period, including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, renewal, patent of addition or any like filing thereof and (ii) pending applications for letters patent, including without limitation any continuation, division, or continuation-in-part thereof and any provisional applications, Controlled by PDL related to the development of Antibodies, including but not limited to applications that claim the composition of matter, manufacture, or use of a Target, Antibody or Product, which are issued or filed prior to or during the term of this Agreement in the United States or any foreign jurisdiction. "PDL Patents" shall not include Joint Patents or EXEL Patents or, until assigned to PDL, Antibody Patents.

39. **"PDL Product"** means any Product developed under this Agreement which (a) [*], or (b) [*].

40. **"Phase III Clinical Trial"** means a trial on sufficient numbers of patients that is designed to establish that a pharmaceutical product is safe and efficacious for its intended use, and to define warnings, precautions and

adverse reactions that are associated with the pharmaceutical product in the dosage range to be prescribed, and to support Regulatory Approval of such pharmaceutical product or label expansion of such pharmaceutical product.

41. **"Precursor Antibody"** means [*] pursuant to this Agreement from [*]. The term "Precursor Antibody" shall include, without limitation [*].

42. **"Pre-Opt-In Product"** means a Product for which EXEL has not made a decision under Section 5.1 whether to co-fund and for which the Opt-In Period has not expired.

43. **"Product"** means any therapeutic or prophylactic product developed under this Agreement, for [*], incorporating [*].

44. **"Product Profit"** means the profit or loss for a particular Co-Funded Product for a particular period calculated as described in Exhibit B.

45. **"Regulatory Approval"** means any and all approvals (including supplements, amendments, pre- and post-approvals, pricing and reimbursement approvals), licenses, registrations or authorizations of any national, supra-national (e.g., the European Commission or the Council of the European Union), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, that are necessary for the manufacture, distribution, use and sale of a Product in a regulatory jurisdiction.

46. **"Research Funding"** means the research funding and license payments made by PDL to EXEL as described in Section 9.2.

47. **"Research Plan"** means the research plan describing the goals and activities to be conducted through the stage of Precursor Antibody evaluation during the Research Term, including initially a detailed description of such goals and activities for the first year of the Research Term and a general description of the goals and intended activities for the remainder of the Research Term, as such plan is amended from time to time during the Research Term in accordance with Section 3.1(b). The Research Plan, including any amended Research Plan, shall be attached as Exhibit A.

48. **"Research Term"** means the period commencing on [*] and ending on the termination [*].

49. **"Sole Inventions"** means any and all Inventions (other than Antibody Inventions) made, discovered or developed solely by one Party and its employees or agents (including, without limitation, consultants or contractors who have assigned rights to inventions to a Party).

50. **"Target(s)"** means [*]. The term "Target(s)" shall include [*], but shall exclude [*].

51. **"Target Pool"** means [*] whenever identified, [*].

52. **"Third Party"** means any entity other than (i) EXEL, (ii) PDL or (iii) an Affiliate of either of them.

53. **"Third Party Royalty"** means any royalty paid by a Party or an Affiliate to a Third Party in respect of the manufacture, importation, use or sale of a Product.

2. The Collaboration Relationship

1. **Overview.** PDL and EXEL will collaborate to identify, develop, market and sell antibodies for use in the diagnosis, prophylaxis and treatment of one or more [*] cancerous conditions. EXEL will conduct activities under the Research Plan to identify Targets and will present all such Targets to PDL [*]. Targets will be analyzed [*]. [*] conduct preclinical testing in preparation for an IND and develop a Development Plan for any Product for which PDL intends to file an IND. If EXEL elects to co-fund one or more Products [*]

3. Management of the Collaboration

1. Joint Scientific Committee.

a. **Membership.** [*] the Effective Date, the Parties shall establish a Joint Scientific Committee (the "JSC") to oversee the research activities of EXEL and PDL under the Research Plan. The JSC shall be composed of four representatives, two members appointed by each of the Parties. One representative from each Party on the JSC shall be the individual at the Party with primary responsibility for the management of the Collaboration. Initial designees shall be Geoff Duyk and Greg Plowman on behalf of EXEL and William Benjamin and Max Vasquez on behalf of PDL. Each Party may replace its appointed JSC representatives at any time upon written notice to the other Party. EXEL shall designate one of its representatives as Chairperson of the JSC, and PDL shall designate one of its representatives as Vice-Chairperson. The Chairperson shall be responsible for scheduling meetings and preparing and circulating a draft agenda in advance of each meeting. Any member may add topics to the agenda. The Vice-Chairperson shall be responsible for preparing and issuing minutes of each meeting within thirty (30) days thereafter.

b. **Responsibilities.** During the [*], the JSC shall meet on a quarterly basis as provided in Section 3.5. Following the Research Term, the JSC shall meet on a quarterly basis for [*] for the purposes of winding down or completing work [*]. [*] may elect to continue to work in the same manner as described in the Research Plan on [*] and [*] on a case-by-case basis. For those [*] for which [*] continues to conduct such work and that complete the stage of in vitro and in vivo validation as described in Section 2.7 of the Research Plan (to the extent specified by the JSC), for each such resulting Product, the Opt-In Decision as set forth in Section 5.1 (i.e., EXEL's right to co-fund) shall survive; otherwise, such rights shall terminate. The JSC shall operate [*] and in accordance with the principles set forth in this Article 3. The JSC shall: (i) evaluate the data generated by the Parties in the course of the Collaboration, (ii) decide what research activities the Parties shall perform on Targets or Precursor Antibodies under the Collaboration, except as provided in Section 4.2, and (iii) review and amend the Research Plan from time to time as appropriate, including not less than an annual review to detail the activities and goals for the upcoming year; provided that any amendment of the Research Plan that varies any material terms of this Agreement shall be subject to Section 15.4, which requires that any such amendment shall be reduced to writing and signed by an authorized officer of each Party.

2. **Joint Patent Committee.** Within [*] the Effective Date, a Joint Patent Committee (the "JPC") shall be formed. The JPC, in consultation with the JSC, will devise a strategy for the protection of intellectual property arising from the Collaboration, including Antibody Target Candidates, Antibody Targets and Antibody Inventions, and will supervise and direct the filing, prosecution and maintenance of all Patents covering the Joint Inventions, as further described in Article 10. This committee will consist of one member from each Party's management team or the Party's designated alternate. The PDL representative will serve as the Chairperson of the JPC. During the term of this Agreement, the JPC will meet at [*], as provided in Section 3.5, and may hold additional meetings at the request of either Party.

3. **Joint Development Committee.**

a. **Membership.** [*] as EXEL exercises its option to co-fund a Product, as provided in Section 5.1, the Parties promptly shall establish a Joint Development Committee (a "JDC") to oversee the development and commercialization of that Co-Funded Product. The JDC shall be composed of four representatives, two members appointed by each of the Parties. One JDC representative from PDL shall be the individual at PDL with primary responsibility for the management of the development of the Product. Each Party may replace its appointed JDC representatives at any time upon written notice to the other Party. PDL shall designate one of its representatives as Chairperson of the JDC, and EXEL shall designate one of its representatives as Vice-Chairperson. The Chairperson shall be responsible for scheduling meetings and preparing and circulating an agenda in advance of each meeting. The Vice-Chairperson shall be responsible for preparing and issuing minutes of each meeting within thirty (30) days thereafter.

b. **Responsibilities.** During the Development of a Co-Funded Product, the JDC for that Co-Funded Product shall meet on a quarterly basis as provided in Section 3.5. Each JDC shall operate [*] and in accordance with the principles set forth in this Article 3. Each JDC shall: (i) oversee the progress of the Development conducted by PDL for its Co-Funded Product, and (ii) review and approve any material amendments to the Development Plan for its Co-Funded Product.

4. Joint Commercialization Committee.

a. **Membership.** [*] for each Co-Funded Product, the Parties shall establish a Joint Commercialization Committee ("JCC") for that Co-Funded Product. The JCC shall be composed of four representatives, two members appointed by each of the Parties. One representative from PDL on the JCC shall be the individual at PDL with primary responsibility for the commercialization of the Product. Each Party may replace its appointed JCC representatives at any time upon written notice to the other Party. PDL shall designate one of its representatives as Chairperson of the JDC, and EXEL shall designate one of its representatives as Vice-Chairperson. The Chairperson shall be responsible for scheduling meetings and preparing and circulating an agenda in advance of each meeting. The Vice-Chairperson shall be responsible for preparing and issuing minutes of each meeting within thirty (30) days thereafter.

b. **Responsibilities.** Each JCC shall meet on a quarterly basis as provided in Section 3.5. Each JCC shall operate [*] and in accordance with the principles set forth in this Article 3. Each JCC shall: (i) prepare a basic commercialization plan, including a launch and marketing plan and budget for the commercialization of its Co- Funded Product (the "Commercialization Plan"), (ii) oversee the implementation of the Commercialization Plan by PDL, and (iii) review and approve any material amendments to the Commercialization Plan. In any event, the Commercialization Plan shall not include detailed Information regarding PDL's implementation of the Plan, including without limitation, sales force incentives, which shall be in PDL's sole discretion. The Commercialization Plan shall be prepared taking into consideration such factors as: (i) the use of Third Party collaborators to develop, market and sell in particular countries or territories, (ii) market conditions, (iii) regulatory factors, and (iv) competition. The Commercialization Plan budget will include all projected additional Regulatory Approvals, and sales and marketing expenses for the Co-Funded Product.

5. **Meetings.** All meetings of the JSC, JPC, JDCs and JCCs shall be held at the headquarters of either EXEL or PDL (or at any other mutually agreed upon location), on an alternating basis. Either Party may bring additional representatives to attend meetings of a particular committee as nonvoting observers. A meeting of a committee may be held by audio or video teleconference with the consent of each Party, provided that at least half of the minimum number of meetings for that committee shall be held in person. Meetings of a committee shall be effective only if at least one representative of each Party is present or participating.

6. **Obligations of Parties.** EXEL and PDL shall provide the JSC, JPC, JDCs and JCCs and their authorized representatives with reasonable access during regular business hours to all records, documents, and Information relating to the Collaboration which any such committee may reasonably require in order to perform its obligations hereunder; provided, however, that if such documents are under a bona fide obligation of confidentiality to a Third Party, then EXEL or PDL, as the case may be, may withhold access thereto to the extent necessary to satisfy such obligation, such access not to be unreasonably withheld. EXEL and PDL may also withhold documents relating to any evaluations of the Collaboration, including documents relating to evaluating the activities under this Agreement or relating to a decision whether to continue a Collaboration project.

7. **Collaboration Guidelines.**

   a. **General.** In all matters related to the Collaboration and the development and marketing of Co-Funded Products, the Parties shall be guided by standards of reasonableness in economic terms and fairness to each of the Parties, striving to balance as best they can the legitimate interests and concerns of the Parties to further the goals of the Collaboration and to realize the economic potential of the Products.

   b. **[*]; Deadlocks.** The JSC, JPC, JDCs and JCCs shall operate [*]. In the event of a deadlock within the JSC, the JPC, a JDC or a JCC concerning any decision, such deadlock shall be resolved as follows:

      i. **JSC Deadlocks.** If a deadlock arises between the members of the JSC, a non-JSC-member officer of each party shall be advised of the deadlock in writing and shall attempt to provide the JSC with a mutually agreed upon resolution within one (1) month. If such resolution is not timely provided, the Chief Executive Officer ("CEO") of each Party shall be advised of the deadlock in writing and the deadlock shall be resolved by mutual agreement of the Parties' CEOs within one (1) month after they have been so advised. If the CEOs do not agree on a resolution, [*] regarding any deadlock concerning target selection (i.e., whether a Target meets the Antibody Target Candidate or Antibody Target criteria) and all other deadlocks shall be submitted to and resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules"). In any event, each Party shall submit a briefing document detailing its position in the deadlock not to exceed 25 double-spaced 8.5"x11" pages within 10 business days of the selection of the arbitrator, and the arbitrator shall be instructed to make such determination within 30 days of submission of both position papers, but in any event not later than 40 days following submission of the matter to arbitration. The arbitration shall be held in San Francisco, California and shall be conducted by one arbitrator who is knowledgeable in the subject matter at issue and who is selected by mutual agreement of the Parties or, failing such agreement, shall be selected according to the AAA Rules. In conducting the arbitration, the arbitrator shall apply the California Rules of Evidence, and shall be able to decree any and all relief of an equitable nature, including without limitation such relief as a temporary restraining order, a preliminary injunction, a permanent injunction, and specific performance. Each Party shall bear its respective costs and expenses and the fees of the arbitrator shall be shared equally.

      ii. **JDC Deadlocks.** If a deadlock arises between the members of a JDC, the CEO of each Party shall be advised of the deadlock in writing and shall attempt to provide the JDC with a mutually agreed upon resolution within one (1) month. If such resolution is not timely provided by the CEOs of the Parties, the deadlock shall be resolved by mutual agreement of the Parties' CEOs within one (1) month after they have been so advised. If the CEOs do not agree on a resolution, then [*].

      iii. **JCC Deadlocks.** If a deadlock arises between the members of a JCC, the CEO of each Party shall be advised of the deadlock in writing and shall attempt to provide the JCC with a mutually agreed upon resolution within one (1) month. If such resolution is not timely provided by the CEOs of the Parties, the deadlock shall be resolved by [*].

   c. **Independence.** Subject to the terms of this Agreement, the activities and resources of each Party shall be managed by such Party, acting independently and in its individual capacity. The relationship between EXEL and PDL is that of independent contractors and neither Party shall have the power to bind or obligate the other Party in any manner, other than as is expressly set forth in this Agreement.

4. Collaboration; Humanization

1. Collaboration.

a. **General.** [*], the Parties shall conduct collaborative research with the general goals and objectives of: (a) applying EXEL technology to discover and characterize Targets that may be useful as tools for the discovery and development of therapeutic and diagnostic Antibodies for controlling cell growth, apoptosis and proliferation in the diagnosis, prevention, treatment or cure of cancer or pre-cancerous conditions, and (b) applying PDL technology [*]. Subject to [*], the obligations of EXEL described in [*] shall terminate [*]. The rights and obligations of PDL in [*] shall terminate as provided for in [*]. The obligations of PDL in [*] shall continue until the later of (i) the [*] or (ii) the time [*]. The details of the Collaboration are set forth below and in the Research Plan. In the event of any conflict between the provisions of this Agreement and those of the Research Plan, the provisions of this Agreement shall govern.

b. **Presentation of Targets.** Promptly after the Effective Date, EXEL shall present to the JSC all Model System Targets and Targets identified prior to the Research Term. During the Research Term, EXEL will conduct activities as described in Sections 2.1 and 2.2 of the Research Plan to identify additional Model System Targets and Targets and, promptly after identification, will present all such additional Model System Targets and Targets to the JSC. [*].

c. **Allocation of Targets to [*].** As described in Section 2.3 of the Research Plan, [*] shall conduct [*] for each [*]. After presentation to the JSC of the [*] and results of such [*] for a [*], the JSC shall determine whether the [*] is to be designated an [*] and pursued in accordance with the Research Plan. All [*] shall be included in and shall constitute the "Work Pool." For each [*] determined not to be designated an [*], then, promptly following such determination by the JSC, and in no event later than the quarterly JSC meeting following the JSC meeting at which such determination was made, [*] shall elect, by notifying the JSC, whether such [*] shall be included in the [*] (in which case it shall be a [*]) or the [*] (in which case it shall be an [*]).

d. **[*]** [*] shall be reserved for possible future inclusion by the JSC in the Work Pool. [*] shall have [*] license with respect to the [*] as set forth in [*]. [*] may designate a maximum number of [*] equal to [*]. [*] may at any time, by notifying the JSC, elect to re-designate a [*] as an [*], in which event it shall no longer count against the maximum number of [*]. The JSC may designate a [*] for out-licensing, in which case it shall continue to count as a [*] until such time as it is either out-licensed or re-designated by [*] as an [*] or re-designated by the JSC to be included in the Work Pool.

e. **[*]** [*] shall be available for possible future inclusion by the JSC in the Work Pool or by [*] in the [*] at [*], subject to the following limitation: If [*] [*] in one or more model organisms, other than [*], either on its own behalf or pursuant to an agreement with a Third Party Antibody Collaborator (as defined below) and if [*] identifies through such [*] that is also a [*], then [*] shall promptly notify the JSC in writing that such [*] was identified in a screen outside the Collaboration. If such [*] is an [*], and if there is a reasonable basis to believe such [*] may have potential in cancer, then no later than the quarterly JSC meeting following the JSC meeting at which such notice was provided, the JSC may elect to include such [*] in the Work Pool or [*] may elect to include such [*]. If neither the JSC nor [*] so elects, then such [*] shall be remain in the [*] and shall be deemed an [*] [*] shall have [*] license with respect to the [*] as set forth in Section 8.1(b), except that it shall have [*] license with respect to any [*] in the [*] as set forth in Section 8.1(a). "Third Party Antibody Collaborator" shall mean a Third Party providing average annual research funding or other non-cash consideration (which shall be fair market value on the date of transfer if known to [*] or, as reasonably estimated by [*] if unknown) of not less than [*] in a designated therapeutic area.

f. **[*]** Each [*] shall be available for selection by the JSC for inclusion in the Work Pool until such time as [*] notifies [*] and the JSC in writing that either [*] or the Third Party Antibody Collaborator has made a decision (as documented by written records of [*]) to begin work to express and purify the protein expressed by such [*] for purposes of developing a [*]. Upon receipt of such notice, [*] shall have no further rights to that [*] and it shall cease to be a [*].

2. **Humanized Antibody Generation and Preclinical Testing.** [*] will determine which Precursor Antibodies should be humanized. If [*] decides not to humanize a particular Precursor Antibody, then the provisions of Section 7.1 shall apply to that Precursor Antibody and the provisions of Section 7.2, if applicable, shall apply to its Target. [*] will generate Humanized Antibodies for each Precursor Antibody selected by [*] and will conduct appropriate preclinical testing, as determined by [*], for preparation of the IND. If [*] decides not to file an IND for any particular Humanized Antibody, then the provisions of Section 7.3 shall apply to that Humanized Antibody.

3. **Conduct of Research.** Each Party shall use Diligent Efforts to conduct: (i) their respective tasks, as contemplated under the Research Plan and by the JSC (the "Research"), and (ii) the Collaboration and the Research in good scientific manner, and in compliance in all material respects with the requirements of applicable laws, rules and regulations and all applicable good laboratory practices to attempt to achieve their objectives efficiently and expeditiously.

4. **Records.** Each Party shall maintain complete and accurate records of all work conducted by it or on its behalf under the Collaboration or pursuant to the Research and all Information generated in connection with its efforts under the Collaboration or pursuant to the Research. Each Party shall maintain such records for a period of [*] after the later to occur of (a) the end of the Research Term, or (b) the termination of all efforts to develop, license, market or sell the Product to which such records pertain. Such records shall fully and properly reflect all work done and all Information generated in the performance of the Collaboration or the Research in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each Party shall have the right to review and copy such records of the other Party at reasonable times to the extent necessary for such Party to conduct its research, development or other obligations under this Agreement.

5. **Reports.** [*], each Party shall report to the JSC not less than [*] and will periodically submit to the other Party and the JSC a written progress report summarizing the Research.

6. **Sharing of Biological Data.** PDL shall provide EXEL with copies of all Information that is Controlled by PDL and that is generated by or on behalf of PDL in the course of the Collaboration. EXEL may use such PDL Information for [*]. EXEL shall not [*]. EXEL shall provide PDL with copies of all Information that is Controlled by EXEL and that is generated by or on behalf of EXEL in the course of the Collaboration. PDL may use such Information for [*].

7. **Right to Engage Third Parties for Collaboration Efforts.** [*] shall have the right to grant licenses and sublicenses to Third Parties of its rights with respect to the conduct of its portion of the Collaboration, as it deems necessary or advisable, provided that [*].

5. Development and Marketing of Co- Funded Products; Exel Products

1. **Development Decision.** At such time as PDL has substantially completed the IND and Development Plan for a Product, PDL shall deliver to EXEL (i) such IND and Development Plan, and (ii) documentation of historical Development Costs described in Section 5.2(a), and the budget for such costs, if any, for that Product. EXEL shall have [*] from the date of PDL's delivery of the IND and the Development Plan to review and comment on the IND and Development Plan ("Opt-In Period") [*] and to determine whether EXEL will elect to co-fund the development and commercialization of that Product ("Opt-In Decision"). If EXEL decides to co-fund such Product, EXEL shall provide written notice to PDL of its Opt-In Decision, accompanied by the payments specified in Section 5.2(a) prior to the expiration of the Opt-In Period. Effective as of the date of such notice, such Product shall become a "Co-Funded Product" and the Development Plan provided to EXEL shall be deemed agreed to by EXEL unless the Parties mutually agree in writing on a revised Development Plan. The Parties then shall establish a Joint Development Committee to oversee the Development of the Co-Funded Product, in accordance with Section 3.3. If EXEL does not so notify PDL and make such payments within the Opt-In Period, then EXEL immediately shall return all copies of the IND and Development Plan for that Product to PDL. Thereafter, that Product shall be deemed a PDL Product, as provided in Section 6.1.

2. **Payments for Co-Funded Products.** EXEL shall make the following payments for each Co-Funded Product:

    a. **Initial Payments.** [*] reimbursement of fifty percent (50%) of the Development Costs incurred by PDL through the end of PDL's most recently ended fiscal quarter prior to PDL's delivery to EXEL of the IND and Development Plan for that Product under Section 5.1.

    b. **Reimbursement of Development Costs.** Following the initial payments under Section 5.2(a), EXEL shall reimburse PDL [*] for fifty percent (50%) of the Development Costs incurred by PDL for each Co-Funded Product. All such reimbursement payments shall be due within thirty (30) days after invoicing by PDL.

3. **Development Plan for Co-Funded Products.** [*] shall provide [*] for all Co-Funded Products. [*] shall [*] of each Co-Funded Product as described in the [*]. [*] shall have the right to [*]. [*] shall have [*]. The JDC for each Co-Funded Product shall carry out its responsibilities, as described in Section 3.3.

4. **Commercialization Plan for Co- Funded Products.** The marketing and sale of each Co-Funded Product will be governed by its Commercialization Plan, prepared as described in Section 3.4. PDL shall have the authority and responsibility to implement each Commercialization Plan. The JCC for each Co-Funded Product shall carry out its responsibilities, as described in Section 3.4.

5. **Right to Engage Third Parties for [*].** PDL may use Third Parties to perform portions of its obligations relating to [*]. In any material agreement with a Third Party relating to the Development of a Product, the Party retaining such Third Party shall provide for terms that are consistent with the terms of this Agreement and the Party shall remain liable for the performance of any obligations hereunder which it delegates to Third Parties. [*] shall have the right to grant licenses and sublicenses to Third Parties of its rights with respect to Co- Funded Products as it deems necessary or advisable for the Development and/or commercialization of Co-Funded Products. [*] shall [*].

6. **INDs and Drug Approval Applications.** [*] shall be responsible for the preparation and filing of, and shall own all regulatory submissions relating to, [*] filed in any regulatory jurisdiction. [*] shall keep the relevant JDC and JCC informed regarding the schedule and process for the preparation of Drug Approval Applications for Co-Funded Products. [*] shall provide a draft copy of the initial Drug Approval Application for each Major Market (as defined in Section 9.3), and all supplemental Drug Approval Applications for each Major Market (e.g., for a new indication) for each Co-Funded Product to EXEL for review, to the extent practical, prior to their submission to the appropriate regulatory authority, provided, however, that [*] shall be required to promptly review such submission and in any event shall have [*] to comment on such documents, [*].

7. **Records.** Each Party shall maintain complete and accurate records of all research and development work conducted by it or on its behalf related to Co-Funded Products and Pre-Opt- In Products, and all Information generated and Development Costs incurred by it or on its behalf in connection with Development under this Agreement with respect to Co-Funded Products and Pre-Opt-In Products. Each Party shall maintain such records for a period of [*] after the later to occur of (a) the end of the Research Term, or (b) the termination of all efforts to develop, license, market or sell the Product to which such records pertain. Such records shall fully and properly reflect all work performed and all Information generated in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes. Each Party shall have the right to review and copy such records of the other Party at reasonable times to the extent necessary for such Party to conduct its research, development or other obligations under this Agreement.

8. **Reports.** During the term of the Agreement, [*] will provide reports at the relevant JDC and JCC meetings summarizing the recent Development and commercialization activities relating to each Co-Funded Product. [*] will provide [*] with summary reports for Pre-Opt-In Products through the JSC or, after the Research Term, upon request by [*], but not more frequently than [*].

9. **Termination of Co-Funding; Out- License of Co-Funded Products.**

    a. **Voluntary Termination by [*].** [*] shall have the right to terminate its co-funding obligation for any Co-Funded Product effective [*] after providing irrevocable, written notice to [*] of such election to terminate. Upon the effective date of such termination: (i) such Product shall be deemed a [*] Product, rather than a Co- Funded Product, (ii) the JDC for such Product shall be disbanded, and (iii) [*] shall no longer have any rights pursuant to Section 9.9 to receive a share of Product Profit with respect to such Product but instead shall receive prospective milestones for events that occur after the effective date of such termination and royalties on Net Sales of such Product pursuant to Article 9. [*]

    b. **Compulsory Termination by [*].** If [*] fails to make a payment under Section 5.2 and such payment is not received within [*] after notice of failure to pay by [*], then at [*] option, [*] shall be deemed to have terminated co-funding effective [*] after the end of such [*] period. The effect of such termination shall be as described in Section 5.9(a).

    c. **Voluntary Termination by [*]; [*] Products.** If [*] decides to terminate the development and/or commercialization of a particular Co-Funded Product and not to attempt to out- license such Co-Funded Product to a Third Party, [*] shall have the right to terminate its obligations to develop and commercialize that Co-Funded Product effective [*] after providing irrevocable, written notice to [*] of such election to terminate. Within [*] after receipt of such notice, [*] shall notify [*] in writing whether or not it elects to assume sole responsibility for, and all costs and obligations of, the continued development and commercialization of such Product. If [*] so elects, then upon the effective date of [*] termination: (i) such Product shall be deemed an "[*]" rather than a Co-Funded Product, (ii) the JDC for such Product shall be disbanded, and (iii) promptly after [*] election, [*] and [*] shall work together to transfer and assign all regulatory documents, contracts, materials and Information to [*] or its designees to the extent necessary for [*] to assume such responsibility. [*].

    d. **Out-Licensing Decision for Products and Diagnostic Products.** [*] shall provide [*] with written notice of its intent to out-license some or all of the rights for a particular Co-Funded Product and/or its related Diagnostic Product to a Third Party (whether or not accompanied by a decision to terminate the development and/or commercialization of a particular Co-Funded Product and/or its Diagnostic Product). [*] shall have [*] from receipt of such notice to notify [*] in writing that it wishes to exercise its right of negotiation. If [*] exercises such right, the Parties shall negotiate for a period of up to [*] to enter into a license agreement, the terms of which shall include customary terms and conditions, including, without limitation, appropriate signing and licensing fees, milestone payments and royalties. If [*] do not enter into a license agreement within such time, [*] thereafter shall have the right to out-license such rights to a Third Party, subject to [*]. Upon [*] entering into such a license or sublicense with a Third Party, [*] shall have [*] and [*] shall have [*]. All compensation received by the Parties from such Third Party under such license or sublicense (including, but not limited to, all license fees, milestone payments and royalty payments) shall be shared as [*] by the Parties in accordance with [*], provided that all such compensation shall be calculated after deductions for Development Costs incurred by either Party under the agreement with the Third Party.

6. Development and Marketing of PDL Products

1. **PDL Products.** If EXEL does not elect to co- fund a Product as provided in Article 5, such Product shall be deemed a PDL Product. PDL shall have sole control and responsibility for the development and commercialization of PDL Products, and EXEL shall have no further rights with respect to such PDL Product except (a) the right to receive milestone and royalty payments as described in Sections 9.3, 9.4 and 9.5, and (b) [*].

2. **Reports.** Upon written request by EXEL to PDL during the term of the Agreement, but not more frequently than once per calendar year, PDL will submit to EXEL a written progress report summarizing the status of each PDL Product.

3. **Right of Negotiation.** [*].

7. Commercialization of Targets and Early-Stage Products

1. **Targets and Precursor Antibodies.** In the event that (a) any Targets result from the Collaboration for which Antibodies are not generated for any reason, or (b) any Precursor Antibodies to a given Antibody Target Candidate or Antibody Target result from the Collaboration, but PDL determines not to select any Precursor Antibodies to that Antibody Target Candidate or Antibody Target for humanization, then the JSC may designate such Targets and/or Precursor Antibodies for out-licensing ("Out-Licensing Candidates"), [*] [*] shall have [*]. All consideration received or to be received from any such license, including, without limitation, all license fees, milestone payments and royalties shall be treated as [*].

2. **[*] Reversion Targets.** Each Target identified by [*] during the [*] that (a) [*] or (b) [*], shall revert to [*] ("Reversion Targets") and shall not be treated as Out-Licensing Candidates pursuant to Section 7.1. Upon a Target becoming a Reversion Target, [*] shall have no further rights to that Reversion Target, it shall cease to be a Target and [*] licenses under this Agreement to that Reversion Target shall terminate.

3. **Humanized Antibodies Not Selected by [*] for IND.** In the event that [*] creates a Humanized Antibody, but decides not to proceed with an IND filing for such Humanized Antibody, then such Humanized Antibody shall be treated in the same manner as a [*] Product is treated under [*].

4. **General Licensing.** Subject to Sections 5.9(d) and 6.3, [*] shall have the right to enter into a license or sublicense with any Third Party for any or all rights to any Antibody Target Candidates, Antibodies or Products [*], including without limitation any Out-Licensing Candidates. All consideration received or to be received from any such license, including, without limitation, all license fees, milestone payments and royalties shall be treated as [*], except that any consideration for [*] shall be allocated as provided in Sections 5.9 and 6.3. Upon [*] or the Parties' entering into such a license or sublicense with a Third Party with respect to any Target, Antibody or Pre-Opt-In Product, all rights under Article 5 shall terminate with respect to the applicable Product licensed to the Third Party.

5. **[*] Reversion.** Effective [*], all [*] shall revert to [*]. [*] shall have no further rights with respect to such [*].

8. Licenses and Related Rights

1. **Licenses to PDL.**

   a. **Research.** Subject to the terms of this Agreement, EXEL hereby grants PDL a non-exclusive, worldwide, non-transferable, royalty-free license for internal use under the EXEL Patents, EXEL Know-How and EXEL's interest in the Joint Patents to the extent necessary (i) to permit PDL to conduct its obligations under Article 4 and (ii) to use and characterize Targets, including, without limitation, the Overlap Targets. The license set forth above includes the right to sublicense, subject to Sections 4.7 and 5.5.

   b. **Pre-Opt-In Products and PDL Products.** Subject to the terms of this Agreement, EXEL hereby grants PDL a worldwide, exclusive license, including the right to sublicense, under the EXEL Patents, EXEL Know-How and EXEL's interest in the Joint Patents (i) to use the Targets [*] for the purpose of creating, developing and marketing antibodies for commercial purposes, (ii) to use Antibody Target Candidates and Antibody Targets to make, have made, use, develop and test Antibodies, and (iii) to make, have made, use, develop, test, sell, offer to sell, have sold and import Pre-Opt-In Products and PDL Products. Such license shall include all human prophylactic and therapeutic indications for Pre-Opt-In Products and PDL Products and shall be milestone and royalty-bearing as set forth in Article 9. The exclusivity of the license set forth in 8.1(b) is subject to EXEL's retained rights under Sections 8.2 (a) and 8.5.

   c. **Co-Funded Products.** Subject to the terms of this Agreement, EXEL hereby grants PDL a worldwide, co-exclusive license (with EXEL), including the right to sublicense, under the EXEL Patents, EXEL Know-How and EXEL's interest in the Joint Patents to make, have made, use, develop, test, sell, offer to sell, have sold and import Co-Funded Products. Such license shall include all human prophylactic and therapeutic indications and shall involve profit-sharing with respect to any such Product in lieu of royalties and milestones as set forth in Article 9.

d. **PDL Diagnostic Products.** Subject to the terms of this Agreement, EXEL hereby grants PDL a worldwide, co-exclusive license, including the right to sublicense, under the EXEL Patents, EXEL Know-How and EXEL's interest in the Joint Patents to make, have made, use, develop, test, sell, offer to sell, have sold and import PDL Diagnostic Products. At the time PDL identifies a Third Party manufacturer for any such PDL Diagnostic Product, PDL may request the co-exclusive license be converted to an exclusive license. [*].

e. **Antibody Inventions.** Subject to the terms of this Agreement, EXEL hereby grants PDL a worldwide, exclusive license, including the right to sublicense, under the Antibody Patents that claim Antibody Inventions invented solely or jointly by PDL to practice such Antibody Inventions for all purposes.

2. **Licenses to EXEL.**

a. **Research.** Subject to the terms of this Agreement, PDL hereby grants EXEL a non-exclusive, worldwide, non-transferable, royalty-free license (without the right to sublicense) for internal use under the PDL Patents, PDL Know-How and PDL's interest in the Joint Patents to the extent necessary (i) to permit EXEL to conduct its obligations under the Research Plan, and (ii) [*].

b. **EXEL Products.** Subject to the terms of this Agreement, effective upon a Product becoming an EXEL Product pursuant to Sections 5.9(c) or 12.2(b), PDL hereby grants to EXEL, a worldwide, license (with the right to sublicense) under the PDL Patents, PDL Know-How and PDL's interest in the Joint Patents to develop, make, have made, use, sell, offer to sell, have sold and import such EXEL Products. This license shall be subject to any licenses or sublicenses granted by PDL in accordance with Section 5.9 prior to the license under this Section 8.2(b) becoming effective. Such license shall include all human prophylactic and therapeutic indications and any Diagnostic Products developed for use in connection with such prophylactic and therapeutic indications and shall be milestone and royalty-bearing as set forth in Section 5.9(c). Such license shall be exclusive to the extent of PDL's interest in an Antibody Patent covering the EXEL Product and to the extent any PDL Patent or Joint Patent relates solely to such EXEL Product; otherwise such license shall be non-exclusive.

c. **EXEL Diagnostic Products.** Subject to the terms of this Agreement, effective upon a Product becoming an EXEL Product pursuant to Section 5.9(c) or 12.2(b), and to the extent PDL then has rights to a EXEL Diagnostic Product developed for use with such EXEL Product, PDL hereby grants to EXEL, a worldwide license (with the right to sublicense) under the PDL Patents, PDL Know-How and PDL's interest in the Joint Patents to develop, make, have made, use, sell, offer to sell, have sold and import such EXEL Diagnostic Product. This license shall be subject to any licenses or sublicenses granted by PDL, in accordance with Section 5.9, prior to the license under this Section 8.2(c) becoming effective. Such license shall include all human diagnostic indications and shall be milestone and royalty-bearing as set forth in Section 5.9(c). Such license shall be consistent with the license granted pursuant to Section 8.2(b) with respect to the EXEL Product for which the EXEL Diagnostic Product is intended to be used.

3. **Negative Covenants.** Each Party hereby covenants that it will not practice any technology licensed to it under this Agreement outside the scope of the licenses granted herein. Specifically and without limitation, EXEL shall not, unless expressly permitted elsewhere in this Agreement [*], provided that this covenant shall not be interpreted to prevent EXEL from [*].

4. **Exclusivity.** EXEL shall not research, develop or commercialize Products, except under the terms of this Agreement. Specifically and without limitation, unless expressly permitted elsewhere in this Agreement, neither EXEL nor its Affiliates shall: (a) [*]; (b) make, have made, use, sell, offer to sell, have sold or import such [*]; or (c) develop, make, have made, sell, offer to sell, have sold or import, a [*] until the earlier of either (i) [*], or (ii) if at any time [*] following the selection of [*]. [*].

5. **Independent Research.** The Parties acknowledge and agree that EXEL may use Information and materials that EXEL generates in the course of performing its obligations under this Agreement that constitutes general know-how relating to [*] for Independent Research. For clarification, EXEL may use the following Information generated by EXEL in the course of performing its obligations under this Agreement, for Independent Research: [*] EXEL shall have no rights under this Agreement to use PDL Information or materials, or to use or operate under any rights licensed by PDL from Third Parties, for Independent Research or for development or commercialization of any product or for any purpose other than as expressly provided under this Agreement.

9. **Compensation**

1. **Loan.** Concurrently with the execution of this Agreement, the Parties are entering into a Note Purchase Agreement of even date herein pursuant to which PDL will loan EXEL thirty million dollars ($30,000,000) pursuant to a Convertible Note. The terms of such Convertible Note shall be governed exclusively by the Note Purchase Agreement and related documents executed pursuant thereto.

2. **Research Funding.** Subject to Sections 12.2 and 12.3, for the first two (2) years of this Agreement, PDL shall make research funding and license payments totaling four million dollars ($4,000,000) per year. This initial

Research Term shall be deemed to begin on [*]. Research Funding shall be payable in equal [*] installments within [*] after the beginning of each [*] during the term of the Research Funding. The annual Research Funding at the rate of four million dollars ($4,000,000) per year shall be [*]. If the Research Term has been [*], then the research funding shall [*] at the rate of [*] for the following [*]. The Research Term and Research Funding thereafter shall be [*] at the rate of four million dollars ($4,000,000) per year for the [*].

3. **Milestone Payments.** For each PDL Product, PDL shall pay EXEL the following amounts within thirty (30) days after each PDL Product achieves the stated milestone:

   a. [*] [*]

   b. [*] [*]

   c. Upon first filing of a BLA for the PDL Product [*]

   d. Upon first Regulatory Approval of the PDL Product in a Major Indication in a Major Market [*]

   e. If the PDL Product has not achieved Milestone 9.3(d), upon such PDL Product achieving sales resulting in cumulative royalty payments from PDL to EXEL under this Agreement of at least [*] [*]

   [*] as used in (b) above shall occur at such time as a draft final report for the trial has been written [*].

   Milestone payments shall be payable only once, which shall be the first time a milestone is achieved. If a milestone for a PDL Product is skipped or avoided by advancing to what would normally be expected to be a later development or regulatory step, then the milestone that was expected to occur earlier shall be deemed to have been achieved at the same time as such later milestone is achieved, and the corresponding payment for both milestones shall be due. For the purposes of milestone payments, all dosage forms, formulations and constructs containing an Antibody against the same Antibody Target shall be deemed a single Product.

   "Major Indication" as used in (d) above means the following: cancers in any of the following: [*]; provided, however, that the PDL Product is [*] in the target cancer.

   "Major Market" as used in (d) above means the United States, United Kingdom, Germany, France, Italy or Japan.

4. Royalty Payments. For sales of each PDL Product for a prophylactic or therapeutic indication by PDL, its Affiliates or sublicensees, PDL shall pay EXEL royalties at the following rates:

Annual Net Sales of a given PDL Product	Royalty Rate
[*]	[*]
[*]	[*]

   Except as set forth in Section 9.6, the foregoing royalty rates shall not be subject to adjustment or reduction for any reason. For the purposes of royalty payments, all dosage forms, formulations and constructs containing the same Antibody shall be deemed a single Product. The measure of annual Net Sales set forth in this Section 9.4 shall be the sum of Net Sales of a particular PDL Product in all countries for each fiscal year of PDL.

   By way of example, if in a particular fiscal year, PDL sells two PDL Products, with one PDL Product having [*] in annual Net Sales and the other PDL Product having [*] in annual Net Sales, then PDL shall make royalty payments to EXEL during that year totaling [*] with respect to the first PDL Product and [*] with respect to the second PDL Product for that fiscal year, assuming no adjustments are required pursuant to Section 9.6.

5. **Royalty Payment for PDL Product for a Diagnostic Indication.** For sales of each Diagnostic Product by PDL, its Affiliates or sublicensees, PDL shall pay EXEL royalties at a rate equal to [*] of the rate that would otherwise apply under Sections 6.3 or 9.4 after all adjustments under this Agreement to such rates.

6. **Royalty Credits and Adjustments.**

   a. The milestone payments set forth in Section 9.3(b) - (d) shall be [*]. In addition, the amount of [*] shall be creditable against royalty payments beginning in the quarter of the [*] as set forth in Section 9.4 and Section 9.5 as provided in Section 9.6(b).

   b. [*]. Amounts paid by PDL to Third Parties for intellectual property applicable to products in addition to PDL Products shall be reasonably allocated among the products covered under the applicable licenses from Third Parties. In any event, royalty credits shall not apply to license fees and other amounts paid under Third Party licenses prior to the Effective Date. Royalty credits may be applied against royalties due under Section 9.4 or Section 9.5 with respect to

PDL Products, provided that the royalty paid by PDL after the application of any credit under this Section 9.6(b) shall not, as a result of such adjustment, be less than [*] of the royalty rate which would otherwise apply under Section 9.4 or Section 9.5 to such Products.

c. [*].

d. In no event shall the royalty rate under Section 9.4 for a PDL Product be reduced pursuant to this Section 9.6 to less than [*].

7. **Term of Royalties.** EXEL's right to receive royalties under Section 9.4 and Section 9.5 shall expire on a country-by-country basis upon the later of (i) [*] from the First Commercial Sale of such PDL Product in such country, or (ii) the expiration of the last to expire issued patent within the EXEL Patents or Joint Patents in such country covering the PDL Product or the manufacture, use or sale of such PDL Product.

8. **Royalty Payment Reports.** All royalty payments under this Agreement shall be made to EXEL or its designee quarterly within [*] following the end of each calendar quarter for which royalties are due or, in the case of royalties from the sales of sublicensees, within [*] following the end of the quarter in which PDL receives the royalty report from the sublicensee. Each royalty payment shall be accompanied by a statement stating the Net Sales, by country, of each PDL Product sold during the relevant calendar quarter.

9. **Profit Sharing For Co-Funded Products.**

a. **Share of Profits.** PDL shall be entitled to [*] of Product Profit from the sale of Co-Funded Products and EXEL shall be entitled to [*] of such Product Profit until such time as, and so long as, [*] of the cumulative Product Profit for all Co-Funded Products equals [*] of the amount paid to EXEL under Section 9.2 (i.e., [*]). Whenever cumulative Product Profit exceeds such amount, each Party shall be entitled to [*] of the subsequent Product Profit from the sale of Co-Funded Products. The respective shares of Product Profit are referred to below as the "PDL Share" and the "EXEL Share." The respective profit sharing described in this Section 9.9(a) may be adjusted for particular Co-Funded Products pursuant to Section 3.7(b).

b. **Determination of Product Profit.** Within [*] after the end of each calendar quarter following the First Commercial Sale of a Co-Funded Product, PDL shall provide EXEL with a statement detailing (i) PDL's Net Sales and the Product Profit incurred or received, as applicable, in the previous calendar quarter with respect to each Co-Funded Product, (ii) the cumulative Product Profit for all Co-Funded Products and (iii) the PDL Share and the EXEL Share for that quarter (the "Quarterly Report"). Such statement shall be accompanied by appropriate supporting information.

c. **Payments.** If the Product Profit for such calendar quarter was negative, then EXEL shall pay the EXEL Share to PDL within [*] after receipt of the Quarterly Report. If the Product Profit for such calendar quarter was positive, then PDL shall pay the EXEL Share to EXEL within [*] after sending the Quarterly Report to EXEL.

10. **Nonrefundable Payments.** Except as expressly provided in this Agreement, all payments made by a Party to the other shall be non-refundable and non- creditable.

11. **Payment Method.** All payments due under this Agreement to a Party shall be made by bank wire transfer in immediately available funds to an account designated by the receiving Party. All payments hereunder shall be made in United States dollars.

12. **Taxes.** Each Party shall pay any and all taxes levied on account of all payments it receives under this Agreement. If laws or regulations require that taxes be withheld, the Party required to withhold will (i) deduct those taxes from the remittable payment, (ii) pay the taxes to the proper taxing authority, and (iii) send evidence of the obligation together with proof of tax payment to the other Party within [*] following that tax payment.

13. **Blocked Currency.** In each country where the local currency is blocked and cannot be removed from the country, royalties or profit share payments accrued in that country shall be paid to the receiving Party in the country in local currency by deposit in a local bank designated by the receiving Party, unless the Parties otherwise agree.

14. **Sublicenses.** In the event PDL grants licenses or sublicenses to others to sell PDL Products which are subject to royalties under Section 9.4, such licenses or sublicenses shall include an obligation for the licensee or sublicensee to account for and report its sales of Products on substantially the same basis as if such sales were Net Sales by PDL, and PDL shall pay to EXEL, with respect to such sales, royalties as if such sales of the licensee or sublicensee were Net Sales of PDL. With respect to such sales of PDL Products by licensees or sublicensees, PDL shall be required only to include information regarding Net Sales reflected in reports received by PDL during the calendar quarter in question. PDL shall use commercially reasonable efforts to cause its

sublicensees to report sales of PDL Products in a manner that will enable PDL to report such Net Sales by licensees and sublicensees on a quarterly basis.

15. **Foreign Exchange.** Conversion of sales recorded in local currencies to United States dollars will be performed in a manner consistent with PDL's normal practices used to prepare its audited financial statements for internal and external reporting purposes, which uses a mutually agreed upon generally accepted source of published exchange rates. It is agreed that the exchange rates published by Citibank or the Wall Street Journal for the last banking day of the quarter shall be acceptable exchange rates; provided that, in the case of sales by sublicensees, the Parties will use the exchange rates provided in the agreements between PDL and such sublicensees.

16. **Records; Inspection.** Each Party shall keep complete and accurate books of account and records for PDL Products, EXEL Products and Co-Funded Products, to be made under this Agreement. Such books and records shall be kept for at least [*] following the end of the calendar year to which they pertain. Such records will be open for inspection during such three year period by independent accountants, solely for the purpose of verifying payment statements hereunder. Such inspections shall be made no more than once each calendar year, at reasonable times and on reasonable notice. Inspections conducted under this Section 9.16 shall be conducted by an independent Third Party reasonably acceptable to both Parties. The audit shall be at the expense of the Party requesting the audit, except in the event that the results of the audit reveal that the audited Party underpaid the Party requesting the audit by [*] or more for any period covered by the audit, in which case the audit fees, and any unpaid amounts (plus interest) that are discovered will be paid promptly by the audited Party, and in any event no later than [*] following delivery of the audit results to the audited Party.

17. **Late Payments.** Any overdue payments under this Agreement shall bear interest at the rate of [*], or the highest rate allowed by law, whichever is less, commencing on the date such payment is due until paid.

10. Intellectual Property

1. **Ownership.**

   a. Except as otherwise described herein and subject to the licenses granted under this Agreement, each Party shall own the entire right, title and interest in and to any and all of its Sole Inventions, and Patents covering such Sole Inventions, except that all Antibody Inventions initially shall be assigned to EXEL. The Parties intend that during patent prosecution [*] (such patent applications and any patents that issue with respect to such applications being referred to as "Antibody Patents"). At the time PDL notifies EXEL pursuant to Section 5.1 and thus commences the Opt-In Period for a particular Product containing a particular Antibody, EXEL shall assign to PDL the Antibody Patents that cover that Antibody. Following such assignment to PDL, the assigned Antibody Patents shall be treated as PDL Patents under this Agreement.

   b. Subject to Section 10.1(a) and the licenses granted under this Agreement, PDL and EXEL shall each own an undivided one-half interest in and to any and all Joint Inventions and Joint Patents. The Parties shall have the right to grant licenses under such Joint Patents only to the extent provided in this Agreement.

2. **Strategy; Disclosure.** During the Research Term, each Party shall submit a written report to the JPC within [*] after the end of each quarter describing any Sole Invention or Joint Invention or Antibody Inventions of which it became aware during the prior quarter that it believes may be patentable. The JPC, in consultation with the JSC, shall decide whether to file a patent application for each such Joint Invention, as discussed in Section 10.3. The JPC shall establish the patent strategy for all Joint Inventions, Antibody Inventions and Inventions pertaining to Antibody Target Candidates and Antibody Targets arising from the Collaboration, considering in good faith EXEL's obligations to PDL and Third Parties relating to patent strategy for Targets.

3. **Patent Prosecution and Maintenance; Abandonment.**

   a. **Sole Inventions.** Each Party shall direct the filing, prosecution and maintenance of all Patents covering its Sole Inventions, to the extent possible consistent with the strategy established by the JPC for Joint Inventions and consistent with the remaining provisions, as applicable, of this Section 10.3.

   b. **EXEL Product Patents.** EXEL shall prosecute and reasonably maintain all of the patents and applications that qualify as EXEL Patents that claim or cover any Co-Funded Product or PDL Product or the Antibody Target of any such Product ("EXEL Product Patents"). If EXEL decides not to continue the prosecution or maintenance of an EXEL Product Patent in any country, it shall promptly advise PDL thereof and, at the request of PDL, EXEL and PDL shall negotiate in good faith to determine an appropriate course of action in the interests of both Parties. If the Parties determine that it would be [*] for PDL to assume responsibility for such prosecution or maintenance, then PDL shall have the right but not the obligation to assume such prosecution or maintenance. If the Parties do not determine that it would be [*] for PDL to assume responsibility for such prosecution or maintenance, then, at PDL's request, EXEL shall continue such prosecution or maintenance, provided that, [*].

c. **PDL Product Patents.** PDL shall prosecute and reasonably maintain all of the patents and applications that qualify as PDL Patents that claim or cover any Co-Funded Product or EXEL Product or the Antibody Target of any such Product ("PDL Product Patents"). If PDL decides not to continue the prosecution or maintenance of a PDL Product Patent in any country, it promptly shall advise EXEL thereof and, at the request of EXEL, PDL and EXEL shall negotiate in good faith to determine an appropriate course of action in the interests of both Parties. If the Parties determine that it would be [*] for EXEL to assume responsibility for such prosecution or maintenance, then EXEL shall have the right but not the obligation to assume such prosecution or maintenance. If the Parties do not determine that it would be [*] for EXEL to assume responsibility for such prosecution or maintenance, then, at EXEL's request, PDL shall continue such prosecution or maintenance, provided that, [*].

d. **Joint Inventions.** Each Party will use reasonable efforts to advise the other of a Joint Invention as provided in Section 10.2 or promptly upon such Party becoming aware of such Joint Invention. If the Invention is an Antibody Invention, it shall be assigned as provided in Section 10.1(a) and shall be prosecuted as provided in Section 10.3(e). As soon as one of the Parties concludes that it wishes to file a patent application covering a Joint Invention, it immediately shall inform the other Party thereof, consult about the filing procedures concerning such patent application, and file such patent applications for the Joint Inventions in such countries as the JPC determines. For this purpose, such Party will provide the other Party with the determination of inventors and scope of claims as early as possible. If a Party is faced with possible loss of rights resulting from the delay necessary for such communication, such communications may take place promptly after filing a provisional or convention application. PDL will have the first right of election to file patent applications for Joint Inventions in any country in the world. If PDL declines to file any such application within [*] after receipt of a written request to do so from EXEL, then EXEL may do so. Regardless of which Party files a patent application, however, any claims covered by such applications shall be considered as part of the Joint Patents. If the Party who initially files a patent application covering a Joint Invention decides not to continue the prosecution or maintenance of such patent application or patent in general or in any particular country, it promptly shall notify the other Party in writing in reasonably sufficient time for such other Party to assume such prosecution and maintenance, and shall take the necessary steps and execute the necessary documents to permit such other Party to assume such prosecution or maintenance. The other Party shall have the right but not the obligation to assume such prosecution or maintenance.

e. **Antibody Inventions.** Antibody Inventions initially shall be assigned to EXEL as provided in Section 10.1(a). Unless the Parties agree otherwise, EXEL shall file patent applications for the Antibody Inventions in such countries as the JPC determines. If EXEL declines to file any such application within [*] after receipt of a written request to do so from PDL, then PDL may do so. At the time that an application constituting an Antibody Patent is filed, EXEL shall promptly notify PDL in writing in reasonably sufficient time for PDL to assume the prosecution and maintenance of that Antibody Patent, and shall take the necessary steps and execute the necessary documents to permit PDL to assume such prosecution or maintenance. If PDL subsequently decides not to continue the prosecution or maintenance of an Antibody Patent directed to a Pre-Opt-In Product, in general or in any particular country, it promptly shall notify EXEL in writing in reasonably sufficient time for EXEL to assume such prosecution and maintenance, and shall take the necessary steps and execute the necessary documents to permit EXEL to assume such prosecution or maintenance. EXEL shall have the right but not the obligation to assume such prosecution or maintenance.

f. **Cooperation.** At the request of the Party performing the prosecution of any patent application under this Section 10.3, the other Party will cooperate, in all reasonable ways, in connection with the prosecution and maintenance of all such patent applications. Each Party shall make available to the other Party or its respective authorized attorneys, agents or representatives such of its employees or consultants as the other Party in its reasonable judgment deems necessary in order to assist such other Party with the prosecution and maintenance of such patents. Each Party shall sign or use commercially reasonable efforts to have signed at no charge to the other Party all legal documents necessary in connection with such prosecution and maintenance.

g. **Updates on Developments.** The Party performing the prosecution of any patent application under this Section 10.3 shall advise the other Party of any substantial action or development in the prosecution of such patent applications and patents, in particular those involving the question of scope or the issuance, rejection, or revocation, of an interference involving, or an opposition to any such patent application or patent. In addition, the Party filing a patent application on a Joint Invention shall provide the other Party with (a) a draft of such new patent application prior to filing that application, allowing adequate time for review and comment by the other Party if possible; provided, however, the filing Party shall not be obligated to delay the filing of any patent application; and (b) copies of material correspondence from patent offices concerning patent applications covering such Joint Invention and a reasonable opportunity to comment on any material responses, amendments or submissions to be made to such patent offices. Notwithstanding the foregoing, PDL (with respect to PDL Patents directed to PDL Products) and EXEL (with respect to EXEL Patents directed to EXEL Products) shall have no obligation to advise or confer

with the other Party with respect to such Patents and shall prosecute, maintain or abandon such Patents in their sole discretion.

h. **Expenses.** For any Patents that relate solely to Co-Funded Products, all costs and expenses for the filing, prosecution (including any interferences, reissue proceedings and reexaminations) and maintenance of such Patents shall be [*]. For any other Patents, all such costs and expenses shall be [*].

4. Enforcement of Patent Rights.

a. Enforcement of PDL Product Patents.

i. **Enforcement by PDL.** In the event either Party becomes aware of a suspected infringement of a PDL Product Patent or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any PDL Product Patent due to the Third Party having an antibody product against the same target as a Co-Funded Product or an EXEL Product, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. PDL shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. EXEL will reasonably assist PDL in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by PDL or required by law [*]. EXEL shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a PDL Product Patent that covers an EXEL Product may be entered into by PDL without the prior consent of EXEL, which consent shall not be unreasonably withheld.

ii. **Enforcement by EXEL.** If PDL elects not to bring any action for infringement or to defend any proceeding described in Section 10.4(a)(i) and so notifies EXEL, then, subject to the rights of any Third Party licensors of such Patent to PDL, EXEL may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. PDL will reasonably assist EXEL in any action or proceeding being prosecuted or defended by EXEL, if so requested by EXEL or required by law at [*]. PDL shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of PDL Patents may be entered into by EXEL without the prior consent of PDL, which consent shall not be unreasonably withheld.

b. Enforcement of EXEL Product Patents.

i. **Enforcement by EXEL.** In the event either Party becomes aware of a suspected infringement of an EXEL Product Patent or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any EXEL Product Patent due to the Third Party having an antibody product against the same target as a Co-Funded Product or a PDL Product, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. EXEL shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. PDL will reasonably assist EXEL in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by EXEL or required by law [*]. PDL shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of an EXEL Product Patent that covers a Co- Funded Product or PDL Product may be entered into by EXEL without the prior consent of PDL, which consent shall not be unreasonably withheld.

ii. **Enforcement by PDL.** If EXEL elects not to bring any action for infringement or to defend any proceeding described in Section 10.4(b)(i) and so notifies PDL, then, subject to the rights of any Third Party licensors of such Patent to EXEL, PDL may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. EXEL will reasonably assist PDL in any action or proceeding being prosecuted or defended by PDL, if so requested by PDL or required by law [*]. EXEL shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of EXEL Patents may be entered into by PDL without the prior consent of EXEL, which consent shall not be unreasonably withheld.

c. Enforcement of Joint Patents.

i. **Enforcement by PDL.** In the event either Party becomes aware of a suspected infringement of a Joint Patent or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any Joint Patent, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. PDL shall have the right, but

shall not be obligated, to prosecute an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. EXEL will reasonably assist PDL in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by PDL or required by law [*]. EXEL shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Patent that covers an EXEL Product may be entered into by PDL without the prior consent of EXEL, which consent shall not be unreasonably withheld.

ii. **Enforcement by EXEL.** If PDL elects not to bring any action for infringement or to defend any proceeding described in Section 10.4(c)(i) and so notifies EXEL, then EXEL may bring such action or defend such proceeding at its own expense, in its own name and entirely under its own direction and control. PDL will reasonably assist EXEL in any action or proceeding being prosecuted or defended by EXEL, if so requested by EXEL or required by law [*]. PDL shall have the right to participate and be represented in any such suit by its own counsel at its own expense. No settlement of any such action or defense which restricts the scope or affects the enforceability of a Joint Patent that covers a Co-Funded Product or PDL Product may be entered into by EXEL without the prior consent of PDL, which consent shall not be unreasonably withheld.

d. **General Provisions Relating to Enforcement of Patents.**

i. **Withdrawal.** If either Party brings such an action or defends such a proceeding under this Section 10.4 and subsequently ceases to pursue or withdraws from such action or proceeding, it shall promptly notify the other Party and the other Party may substitute itself for the withdrawing Party under the terms of this Section 10.4 at its own expense.

ii. **Recoveries.** In the event either Party exercises the rights conferred in this Section 10.4 and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared [*]. If after such reimbursement any funds shall remain from such damages or other sums recovered, such funds shall be [*].

e. **Excluded Patents.** Certain patents as identified in Exhibits D-1 and D-2 relating to background technologies of either EXEL or PDL, shall not be subject to the provisions of Sections 10.3 and 10.4 (a-d).

5. **Trademarks; Product Presentation.**

a. **Co-Funded Products.** PDL shall own all right title and interest in and to all trademarks, trade names, service marks and trade dress specifically developed for and used on or in connection with all Co- Funded Products. PDL shall be responsible for all decisions regarding the trademarks, service marks and trade dress used on and in connection with all Co- Funded Products. PDL and EXEL shall each retain sole and exclusive ownership of their own respective and independently developed and pre-existing trademarks, trade names, service marks and trade dress, regardless of whether such trademarks, trade names, service marks and trade dress are used on or in connection with any Co-Funded Product. The JCC shall approve all trademarks and service marks used on or in connection with any Co-Funded Products. Subject to applicable laws, rules and regulations, any written or visual promotional or educational materials intended for use in conjunction with Co-Funded Products shall refer to both Parties (where practical) with substantially equal prominence, and all product labeling and promotional material regarding the detailing and promoting of such Products shall display the names and logos of PDL and EXEL (where practical) with substantially equal prominence.

b. **PDL Products.** PDL shall own all right title and interest in and to all trademarks, service marks and trade dress specifically developed by PDL for and used on or in connection with all PDL Products. PDL shall be responsible for all decisions regarding the trademarks, service marks and trade dress used on or in connection with all PDL Products.

c. **EXEL Products.** EXEL shall own all right title and interest in and to all trademarks, service marks and trade dress specifically developed by EXEL for and used on or in connection with all EXEL Products. EXEL shall be responsible for all decisions regarding the trademarks, service marks and trade dress used on or in connection with all EXEL Products. PDL agrees to assign promptly any trademark rights for an EXEL Product to EXEL.

11. Confidentiality

1. **Nondisclosure of Confidential Information.** All written and oral Information disclosed by one Party to the other Party pursuant to this Agreement and characterized as confidential to the receiving Party shall be "Confidential Information." The Parties agree that during the term of this Agreement, and for a period of [*] after this Agreement expires or terminates, a Party receiving Confidential Information of the other Party will (i)

maintain in confidence such Confidential Information to the same extent such Party maintains its own proprietary information of similar kind and value (but at a minimum each Party shall use commercially reasonable efforts), (ii) not disclose such Confidential Information to any Third Party without prior written consent of the other Party, and (iii) not use such Confidential Information for any purpose except those permitted by this Agreement.

2. **Exceptions.** The obligations in Section 11.1 shall not apply with respect to any portion of the Confidential Information that the receiving Party can show by competent written proof:

    a. Is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder; or

    b. Was known to the receiving Party, without obligation to keep it confidential, prior to disclosure by the disclosing Party; or

    c. Is subsequently disclosed to the receiving Party by a Third Party lawfully in possession thereof and without obligation to keep it confidential; or

    d. Has been published by a Third Party; or

    e. Has been independently developed by the receiving Party without the aid, application or use of Confidential Information.

3. **Authorized Disclosure.** A Party may disclose the Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary in any of the following instances:

    a. Filing or prosecuting Patents relating to Sole Inventions, Joint Inventions or Products;

    b. Regulatory filings relating to Products;

    c. Prosecuting or defending litigation;

    d. Complying with applicable governmental regulations; or

    e. Disclosure, in connection with the performance of this Agreement, to Affiliates, sublicensees, prospective licensees, research collaborators, employees, consultants, or agents, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 11.

    The Parties acknowledge that the terms of this Agreement shall be treated as Confidential Information of both Parties. Such terms may be disclosed by a Party to investment bankers, investors, prospective business partners (including potential acquirers or acquisition targets) and potential investors, each of whom prior to disclosure must be bound by similar obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Article 11. In addition, if required, a copy of this Agreement may be filed by either Party with the Securities and Exchange Commission. In connection with any such filing, the filing Party shall endeavor to obtain confidential treatment of economic and trade secret information and shall consult with the other Party prior to such filing with respect to determining for which information confidential treatment should be sought.

4. **Publicity.** The Parties agree that the public announcement of the execution of this Agreement shall be substantially in the form of the press release attached as Exhibit C. Any other news release relating to this Agreement or to the performance hereunder, shall first be reviewed and approved by both Parties; provided, however, that any disclosure which is required by law as advised by the disclosing Party's counsel may be made without the prior consent of the other Party, although the other Party shall be given prompt notice of any such legally required disclosure and to the extent practicable shall provide the other Party an opportunity to comment on the proposed disclosure.

5. **Publications.** Neither Party shall publish or present the results of studies carried out under this Agreement without the opportunity for prior review by the other Party. Subject to Section 11.3, each Party agrees to provide the other Party the opportunity to review any proposed abstracts, manuscripts or presentations (including verbal presentations) which relate to any Target, Antibody or Product (excluding any Product that has become a PDL Product) at least [*] prior to its intended submission for publication and agrees, upon request, not to submit any such abstract or manuscript for publication until the other Party is given a reasonable period of time to secure patent protection for any material in such publication which it believes to be patentable. Both Parties understand that a reasonable commercial strategy may require delay of publication of information for filing of patent applications. The Parties agree to review and consider delay of publication and filing of patent applications under certain circumstances. The JSC and JPC will review such requests and recommend subsequent action. Neither Party shall have the right to publish or present Confidential Information of the other Party that is subject to Section 11.1. Nothing contained in this Section 11.5 shall prohibit the inclusion of information necessary for a patent application, except for Confidential Information of the nonfiling Party, provided the nonfiling Party is

given a reasonable opportunity to review the information to be included prior to submission of such patent application. Any disputes between the Parties regarding delaying a publication or presentation to permit the filing of a patent application shall be referred to the JSC or, for a Co-Funded Product, the relevant JDC.

12. Term and Termination

1. **Term.** This Agreement shall become effective on the Effective Date and shall remain in effect until the expiration of the last royalty or profit sharing payment obligation with respect to any Product, as provided in this Agreement.

2. **Termination for Material Breach.**

   a. **Entire Agreement.** If either Party breaches any material agreement, condition or covenant of this Agreement, the Note Purchase Agreement or the Note, or makes any materially false report to the other Party, the Party not in breach may terminate this Agreement at its option on [*] written notice, subject to the remaining provisions of this Section 12.2; provided however, that any breach that relates only to a particular Product(s) or only to the activities under the Collaboration shall be governed by Section 12.2(b) instead of this Section 12.2(a).

   b. **Particular Products or Collaboration.** In the case of a breach that relates only to a particular Product(s) or only to the activities under the Collaboration, the non-breaching Party, at its option on [*] written notice and subject to the remaining provisions of this Section 12.2, may terminate this Agreement as to the particular Product(s) to which such breach relates, (provided, however, that after such time as the breaching Party has first filed for Regulatory Approval of a Product, the non-breaching Party may terminate the breaching Party's rights to such Product only in those countries to which such breach relates) or in the case of a breach relating only to the activities under the Collaboration, the non-breaching Party may terminate the Collaboration under this Agreement, but this Agreement shall continue in full force and effect with respect to all Products. In the event of a breach by PDL with respect to a particular Co-Funded Product, then EXEL, as an alternative to terminating the Agreement as to such Product as provided above, may instead, on providing [*] written notice to PDL, elect to terminate PDL's rights to such Co-Funded Product on the same terms as if PDL had voluntarily terminated its rights to such Co-Funded Product under Section 5.9(c).

   c. **Right to Cure.** In any notice of breach under this Section 12.2, the non-breaching Party shall identify the actions or conduct that such Party considers to be a material breach and specify conduct or actions that the notifying Party would consider to be an acceptable cure of such breach. No termination of this Agreement or the Collaboration or of rights relating to a particular Product or country pursuant to Section 12.2(a) or (b) shall become effective unless such breach shall not have been remedied, or steps initiated to remedy the same to the non-breaching Party's reasonable satisfaction, within [*] after written notice thereof to the breaching Party, or, in case the breach is a failure to make any payment when due, within [*] after such notice.

   d. **Disputes.** If a Party gives notice of termination under this Section 12.2 and the other Party disputes whether such notice was proper, then the issue of whether this Agreement has been terminated shall be resolved in accordance with Section 15.1. If, as a result of such dispute resolution process it is determined that the notice of termination was proper, then such termination shall be deemed to have been effective on the effective date of the notice of termination. If as a result of such dispute resolution process it is determined that the notice of termination was improper, then no termination shall have occurred and this Agreement shall have remained in effect.

3. **Termination or Expiration of Research Funding/Collaboration.** PDL and EXEL shall have their respective rights to terminate Research Funding as described in Section 9.2, which shall have the effect of terminating the Research Term. Upon such termination or upon expiration of the Research Term, the Collaboration under this Agreement shall terminate, but all other rights and obligations under this Agreement shall continue. If either Party terminates the Collaboration pursuant to Section 12.2, any Research Funding paid by PDL for any time period beyond the effective date of such termination shall be immediately refunded by EXEL to PDL. The termination or expiration of the Collaboration shall not affect any rights of PDL to any Targets, Antibodies or Products resulting from the Collaboration prior to its termination or expiration.

4. **Effect of Termination of Entire Agreement or Rights to Particular Product.** Upon termination of this Agreement in its entirety pursuant to Section 12.2(a), all licenses granted to the breaching Party under this Agreement shall terminate and the breaching Party shall return to the non-breaching Party all materials and Information delivered under this Agreement by the non-breaching Party to the breaching Party, except as provided in Section 12.5. Upon termination of this Agreement pursuant to Section 12.2(b) with respect to a particular Product, all licenses granted to the breaching Party under this Agreement with respect to that Product (for the countries in which such rights are being terminated) shall terminate and, if such termination is for all countries, the breaching Party shall return to the non-breaching Party all materials and Information delivered under this Agreement by the non-breaching Party to the breaching Party relating to that Product, except as provided in Section 12.5.

5. **Inventory.** Upon termination of this Agreement in its entirety or with respect to a particular Product for which Regulatory Approval has been obtained, the breaching Party shall have all rights necessary to sell within [*] of such termination any such Product in its or its Affiliates' or sublicensee's inventory on the date of such termination, which have not previously been sold ("Inventory"); provided, however that the breaching Party shall pay the royalties due on such Inventory and provide related reports in the amounts and manner provided for in Article 9.

6. **Survival.**

   a. In the event of termination of this Agreement for any reason other than material breach pursuant to Section 12.2, in addition to those Sections which by their terms survive, the following provisions of this Agreement shall also survive: Articles 1, 5, 6, 7, 8 10, 11, 12, and 15 and Sections 9.3 - 9.17, 14.1 and 14.2.

   b. In the event of termination of this Agreement pursuant to Section 12.2, the provisions of this Agreement referenced in Section 12.6(b) shall survive, provided, however, that any licenses granted under this Agreement in favor of the breaching Party shall terminate. In such case, the non-breaching Party shall continue to hold the licenses granted hereunder, subject to the royalties set forth herein.

   c. In any event, termination of this Agreement shall not relieve the Parties of any liability or obligation which accrued hereunder prior to the effective date of such termination, nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, nor prejudice either Party's right to obtain performance of any obligation.

13. Representations and Covenants

1. **Mutual Authority.** EXEL and PDL each represents and warrants to the other that (a) it has the authority and right to enter into and perform this Agreement and (b) its execution, delivery and performance of this Agreement will not conflict in any material fashion with the terms of any other agreement to which it is or becomes a party or by which it is or becomes bound.

2. **Representations by EXEL.**

   a. EXEL [*].

   b. To its knowledge, EXEL, as of the Effective Date, owns or has a valid license to use all technology it anticipates using in the Collaboration.

3. **Rights in Technology.** During the term of this Agreement, each Party will use Diligent Efforts not to diminish the rights under its Patents or Joint Patents granted to each other herein, including without limitation by not committing or permitting any acts or omissions which would cause the breach of any agreements between itself and Third Parties which provide for intellectual property rights applicable to the development, manufacture, use or sale of Products. Each Party agrees to provide promptly the other Party with notice of any such alleged breach. As of the Effective Date, each Party is in compliance in all material respects with any aforementioned agreements with Third Parties.

4. **Performance by Affiliates.** The Parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates, provided, however, that each Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance.

14. Indemnification and Limitation of Liability

1. **Indemnification.**

   a. **PDL Products.** PDL hereby agrees to defend and hold harmless EXEL and its agents and employees from and against any and all suits, claims, actions, demands, liabilities, expenses and/or loss, including reasonable legal expenses and reasonable attorneys' fees ("Losses") resulting directly or indirectly from the manufacture, use, testing, handling, storage, sale or other disposition of PDL Products by PDL or its Affiliates, agents or sublicensees except to the extent such Losses result from the negligence or wrongdoing of EXEL.

   b. **EXEL Products.** EXEL hereby agrees to defend and hold harmless PDL and its agents and employees from and against any and all Losses resulting directly or indirectly from the manufacture, use, testing, handling, storage, sale or other disposition of EXEL Products by EXEL or its Affiliates, agents or sublicensees except to the extent such Losses result from the negligence or wrongdoing of PDL.

   c. **General Indemnification Provisions.** In the event that a Party is seeking indemnification under this Section 14.1, it shall inform the other Party of a claim as soon as reasonably practicable after it receives

notice of the claim, shall permit the other Party to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration), and shall cooperate as requested by the other Party (at the expense of the other Party) in the defense of the claim.

d. **Co-Funded Products.** In the event of any Losses to either Party resulting directly or indirectly from the manufacture, use, testing, handling, storage, sale or other disposition of Co-Funded Products by either Party or their Affiliates, agents or sublicensees, such [*] or if no Regulatory Approval has occurred for the Co-Funded Product, then such [*] for that Co-Funded Product.

2. **Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 14.1, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT. For clarification, the foregoing sentence shall not be interpreted to limit or to expand the express rights specifically granted in the sections of this Agreement.

3. **Product Liability Insurance.** Any Party developing a Product shall carry product liability insurance of not less than [*]. Such product liability insurance shall be in effect not later than the first administration of a Product in humans. Notwithstanding the foregoing, a Party may self-insure for product liability claims if the Party then has current assets of at least [*].

15. Miscellaneous

1. **Dispute Resolution.** In the event of any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, other than a dispute addressed in Sections 3.7 or 15.3, the Parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to an appropriate Vice President (or higher level officer) of each Party and, if not resolved by such officers, by referring the disputed matter to the respective Chief Executive Officers of each Party. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within twenty (20) days after such notice, such representatives of the Parties shall meet for attempted resolution by good faith negotiations. If such personnel are unable to resolve such dispute within thirty (30) days of their first meeting of such negotiations, either Party may seek to have such dispute resolved in any United States federal court of competent jurisdiction and appropriate venue. The Parties hereby consent to jurisdiction in the United States federal courts. If, notwithstanding such consent, United States federal courts would not have proper jurisdiction over a dispute, then such dispute may be submitted to any state court in the United States with proper jurisdiction and venue. The Parties agree that, except as provided in Section 15.3, any dispute under this Agreement shall be submitted exclusively to a state or federal court in the United States.

2. **Governing Law.** Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of California, as applied to agreements executed and performed entirely in the State of California by residents of the State of California, without regard to conflicts of law rules.

3. **Patents and Trademarks.** Any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of any Patent rights covering the manufacture, use or sale of any Product or of any trademark rights related to any Product shall be submitted to a court of competent jurisdiction in the territory in which such Patent or trademark rights were granted or arose.

4. **Entire Agreement; Amendment.** This Agreement sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto and supersedes and terminates all prior agreements and understandings between the Parties. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

5. **Export Control.** This Agreement is made subject to any restrictions concerning the export of products or technical information from the United States or other countries which may be imposed upon or related to EXEL or PDL from time to time. Each Party agrees that it will not export, directly or indirectly, any technical information acquired from the other Party under this Agreement or any products using such technical information to a location or in a manner that at the time of export requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity.

6. **Bankruptcy.**

a. All rights and licenses granted under or pursuant to this Agreement, including amendments hereto, by each Party to the other Party are, for all purposes of Section 365(n) of Title 11 of the United States Code ("Title 11"), licenses of rights to intellectual property as defined in Title 11. Each Party agrees during the term of this Agreement to create and maintain current copies or, if not amenable to copying, detailed descriptions or other appropriate embodiments, to the extent feasible, of all such intellectual property. If a case is commenced by or against either Party (the "Bankrupt Party") under Title 11, then, unless and until this Agreement is rejected as provided in Title 11, the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitation, a Title 11 Trustee) shall, at the election of the Bankrupt Party made within sixty (60) days after the commencement of the case (or, if no such election is made, immediately upon the request of the non-Bankrupt Party) either (i) perform all of the obligations provided in this Agreement to be performed by the Bankrupt Party including, where applicable and without limitation, providing to the non- Bankrupt Party portions of such intellectual property (including embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them or (ii) provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them.

b. If a Title 11 case is commenced by or against the Bankrupt Party and this Agreement is rejected as provided in Title 11 and the non-Bankrupt Party elects to retain its rights hereunder as provided in Title 11, then the Bankrupt Party (in any capacity, including debtor-in-possession) and its successors and assigns (including, without limitations, a Title 11 Trustee) shall provide to the non-Bankrupt Party all such intellectual property (including all embodiments thereof) held by the Bankrupt Party and such successors and assigns or otherwise available to them immediately upon the non- Bankrupt Party's written request therefor. Whenever the Bankrupt Party or any of its successors or assigns provides to the non-Bankrupt Party any of the intellectual property licensed hereunder (or any embodiment thereof) pursuant to this Section 15.6, the non-Bankrupt Party shall have the right to perform the obligations of the Bankrupt Party hereunder with respect to such intellectual property, but neither such provision nor such performance by the non-Bankrupt Party shall release the Bankrupt Party from any such obligation or liability for failing to perform it.

c. All rights, powers and remedies of the non-Bankrupt Party provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including, without limitation, Title 11) in the event of the commencement of a Title 11 case by or against the Bankrupt Party. The non-Bankrupt Party, in addition to the rights, power and remedies expressly provided herein, shall be entitled to exercise all other such rights and powers and resort to all other such remedies as may now or hereafter exist at law or in equity (including, without limitation, under Title 11) in such event. The Parties agree that they intend the foregoing non-Bankrupt Party rights to extend to the maximum extent permitted by law and any provisions of applicable contracts with Third Parties, including without limitation for purposes of Title 11, (i) the right of access to any intellectual property (including all embodiments thereof) of the Bankrupt Party or any Third Party with whom the Bankrupt Party contracts to perform an obligation of the Bankrupt Party under this Agreement, and, in the case of the Third Party, which is necessary for the development, registration and manufacture of Products, and (ii) the right to contract directly with any Third Party described in Section 15.6(c)(i) to complete the contracted work. Any intellectual property provided pursuant to the provisions of this Section 15.6 shall be subject to the licenses set forth in this Agreement and the payment obligations of this Agreement, which shall be deemed to be royalties for purposes of Title 11.

7. **Force Majeure.** Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the control of the Parties, including without limitation, an act of God, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe; provided, however, the payment of invoices due and owing hereunder shall not be delayed by the payer because of a force majeure affecting the payer.

8. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given for all purposes if sent by express delivery service or personally delivered, or by facsimile or electronic mail and confirmed by first class mail. Unless otherwise specified in writing, the mailing addresses of the Parties shall be as described below.

For EXEL:	Exelixis, Inc.
	170 Harbor Way
	P.O. Box 511

	South San Francisco, CA 94083-0511
	Attention: Chief Executive Officer
With a copy to:	Cooley Godward LLP
	Five Palo Alto Square
	3000 El Camino Real
	Palo Alto, CA 94306-2155
	Attention: Robert L. Jones, Esq.
For PDL:	Protein Design Labs, Inc.
	34801 Campus Drive
	Fremont, CA 94555-3606
	Attention: Chief Executive Officer
With a copy to:	Protein Design Labs, Inc.
	34801 Campus Drive
	Fremont, CA 94555-3606
	Attention: General Counsel

9. **Consents Not Unreasonably Withheld or Delayed.** Whenever provision is made in this Agreement for either Party to secure the consent or approval of the other, that consent or approval shall not unreasonably be withheld or delayed, and whenever in this Agreement provisions are made for one Party to object to or disapprove a matter, such objection or disapproval shall not unreasonably be exercised.

10. **United States Dollars.** References in this Agreement to "Dollars" or "$" shall mean the legal tender of the United States.

11. **No Strict Construction.** This Agreement has been prepared jointly and shall not be strictly construed against either Party.

12. **Assignment.** Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except a Party may make such an assignment without the other Party's consent to an Affiliate or to a successor to substantially all of the business of such Party, whether in a merger, sale of stock, sale of assets or other transaction. Any permitted successor or assignee of rights and/or obligations hereunder shall, in writing to the other Party, expressly assume performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 15.12 shall be null and void and of no legal effect.

13. **Electronic Data Interchange.** If both Parties elect to facilitate business activities hereunder by electronically sending and receiving data in agreed formats (also referred to as Electronic Data Interchange or "EDI") in substitution for conventional paper-based documents, the terms and conditions of this Agreement shall apply to such EDI activities.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

16. **Severability.** If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

17. **Ambiguities.** Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

18. **Headings.** The headings for each article and section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular article or section.

19. **No Waiver.** Any delay in enforcing a Party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.

In Witness Whereof, the Parties have executed this Agreement in duplicate originals by their proper officers as of the date and year first above written.

Protein Design Labs, Inc.	**Exelixis, Inc.**
By: /s/ Laurence Jay Korn	By: /s/ George Scangos
Laurence Jay Korn	George A. Scangos
Chairperson and Chief Executive Officer	Chief Executive Officer

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

List of Exhibits

Exhibit A	Research Plan
Exhibit B	Product Profit Calculation
Exhibit C	Form of Press Release
Exhibit D-1	EXEL Background Patents
Exhibit D-2	PDL Background Patents

Exhibit A

RESEARCH PLAN

[*]

Exhibit A1

Entrypoints for Genetic Screens -

Proposed or Initiated in Oncology Program

[*]

Exhibit B

Product Profit Calculation

[*]

EXHIBIT C

For Immediate Release

Contacts:	
Robert L. Kirkman, M.D.	Glen Y. Sato
Vice President, Business Development	Chief Financial Officer
and Corporate Communications	Exelixis, Inc.
Protein Design Labs, Inc.	(650) 837-7565
(510) 574-1419, rkirkman@pdl.com	gsato@exelixis.com

PROTEIN DESIGN LABS AND EXELIXIS ANNOUNCE

ONCOLOGY ANTIBODY DRUG DISCOVERY COLLABORATION

FREMONT and SOUTH SAN FRANCISCO, CA - May 22, 2001 - Protein Design Labs, Inc. (Nasdaq: PDLI) (PDL) and Exelixis, Inc. (Nasdaq: EXEL) (Exelixis) announced today a collaboration to discover and develop humanized antibodies for the diagnosis, prevention and treatment of cancer. The collaboration will utilize Exelixis' model organism genetics technology for the identification of new cancer drug targets, and PDL's antibody and clinical development expertise to create and develop new antibody drug candidates. PDL will provide Exelixis with $4.0 million in annual research funding for two or more years, and has purchased a $30.0 million note convertible after the first year of the collaboration into shares of Exelixis common stock.

George A. Scangos, Ph.D., President and Chief Executive Officer of Exelixis, said, "We're pleased to be working with PDL, a leader in the development of humanized antibodies, and are already in a position to deliver our first targets under this collaboration. PDL is committed to a high- quality pipeline of anti-cancer antibody products, and I am pleased that PDL has recognized the value in our oncology target portfolio. The direct cash value to Exelixis is substantial, and there is considerably more value in the co- development rights that Exelixis has in this program, and in the resources that PDL will bring to the collaboration. This relationship is consistent with Exelixis' strategy of moving towards the market and capturing increasing value from the results of our research, and is a strong complement to our internal efforts directed towards finding small molecule therapeutics for cancer."

Laurence Jay Korn, Ph.D., Chief Executive Officer and Chairperson of Protein Design Labs, said, "PDL has seven antibodies in clinical development, including Zamyl™ (anti-CD33) and Remitogen™ (anti-HLA- DR) for potential cancer indications, and Nuvion™ (anti-CD3) for the treatment of graft versus host disease. This collaboration provides PDL with an opportunity to expand our pipeline of oncology drugs with new antibodies that specifically block the initiation or progression of cancer, using the model organism genetic approach of Exelixis to identify novel targets. The Exelixis technology is designed to provide information about the function of a target at an early stage, which mav be quite valuable, as we believe antibodies for cancer are likely to work best when they interfere with a function necessary for cell growth or proliferation, or when they induce apoptosis."

Under the terms of the collaborative agreement, PDL will receive an exclusive, worldwide license to develop antibodies against certain targets identified by Exelixis that are involved in cell growth, apoptosis (cell death) and proliferation. This approach may provide potential targets for developing novel humanized antibodies for the treatment of cancer using PDL's proprietary SMART™ antibody technology. Exelixis will have the right to co-fund and co-develop antibodies resulting from the collaboration. For antibody products developed by PDL that Exelixis elects not to co-develop, Exelixis will be entitled to specified milestone payments and royalty payments on any product sales.

Protein Design Labs, Inc. is a leader in the development of humanized antibodies to prevent or treat various disease conditions. PDL currently has antibodies under development for autoimmune and inflammatory conditions, asthma and

cancer. PDL holds fundamental patents in the U.S., Europe and Japan for its antibody humanization technology. Further information is available at www.pdl.com.

Exelixis, Inc. is a leading life sciences biotechnology company focused on product development through its expertise in comparative genomics and model system genetics. These technologies provide a rapid, efficient and cost-effective way to move from DNA sequence data to knowledge about the function of genes and the proteins that they encode. Exelixis' technology is broadly applicable to all life science industries including pharmaceutical, diagnostic, agricultural biotechnology and animal health. Exelixis has partnerships with Aventis, Bayer, Pharmacia, Bristol-Myers Squibb and Dow AgroSciences and is building its internal development program in the area of oncology. For more information, please visit Exelixis' web site at www.exelixis.com.

This press release contains certain forward-looking statements that involve risks and uncertainties that may affect our business, as more fully discussed in the "Risk Factors" section of our filings with the U.S. Securities and Exchange Commission. These risks and uncertainties include, but are not limited to, our ability successfully to collaborate and identify novel targets and develop potential products from the collaboration. Exelixis and PDL direct the reader to our respective SEC filings, including our respective Annual Reports on Form 10-K for the year ended December 31, 2000. The information in this press release is current as of its release date. Neither party assumes responsibility to update the information.

Exelixis and the Exelixis logo are registered U.S. trademarks of Exelixis, Inc.

Protein Design Labs, the PDL logo and SMART are registered U.S. trademarks and Zamyl, Remitogen and Nuvion are U.S. trademarks of Protein Design Labs, Inc.

Exhibit D-1

THIRD PARTY TECHNOLOGY

[*]

Exhibit D-2

PDL Excluded Patents

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Exhibit 10.2

NEITHER THIS CONVERTIBLE NOTE NOR THE UNDERLYING SHARES HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER (AS DEFINED BELOW) MAY NOT TRANSFER THIS CONVERTIBLE NOTE, OR ANY SHARES ISSUED PURSUANT TO ITS CONVERSION PROVISION, UNLESS (i) THERE IS AN EFFECTIVE REGISTRATION STATEMENT COVERING SUCH NOTE OR SUCH SHARES UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, (ii) THE COMPANY FIRST RECEIVES A LETTER FROM AN ATTORNEY, ACCEPTABLE TO THE COMPANY OR ITS AGENTS, STATING THAT IN THE OPINION OF THE ATTORNEY THE PROPOSED TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND UNDER ALL APPLICABLE STATE SECURITIES LAWS, OR (iii) THE TRANSFER IS MADE PURSUANT TO RULE 144 UNDER THE SECURITIES ACT.

EXELIXIS, INC.

5.75% CONVERTIBLE
NOTE DUE MAY 22, 2006

South San Francisco, California

FOR VALUE RECEIVED, Exelixis, Inc., a Delaware corporation (the "Company"), hereby promises to pay, subject to the conversion provisions in Section 6 herein, to Protein Design Labs, Inc., a Delaware corporation, or its permitted transfers and assigns (the "Lender" or "Holder") the principal sum of THIRTY MILLION DOLLARS ($30,000,000) plus interest plus enforcement costs (including, but not limited to, reasonable attorney fees) thereon (collectively, the "Obligations") on the earlier of (i) a "Change in Control" (as hereinafter defined) of the Company; and (ii) May 22, 2006 (such earlier date being the "Maturity Date"). A "Change in Control" of the Company would occur if the Company sells, conveys or otherwise disposes of all or substantially all of its property or business, or merges or consolidates with any other corporation or business entity (other than a wholly-owned subsidiary of the Company) or effects any other transaction or series of transactions in which (I) the members of the Board of Directors of the Company prior to the transaction or series of transactions constituting the putative Change in Control event do not constitute a majority of the members of the Board of Directors of the enterprise following completion of the transaction or series of transactions constituting the putative Change in Control event (and in any event excluding from any such calculation any members of the Board of Directors who prior to such transaction(s) were members of the Board of both the Company and such other company or entity); and (II) the stockholders of the Company immediately prior thereto own less than a majority of the outstanding voting securities of the Company (or its successor or parent) immediately thereafter.

Section 1. **Interest**. Interest on the outstanding principal amount shall be cumulative, accrue at the rate of 5.75% per annum (or, if lower, the maximum rate permitted by law), and be paid in cash annually in arrears from and after the date hereof until and including the Maturity Date, unless this convertible note ("Note") is converted pursuant to Section 6 hereof, in which case accrued interest thereon (whether or not yet payable) shall be payable in cash to Lender within thirty (30) days of such date of conversion. Any interest not paid when due shall accrue interest at a rate of 10% per annum (or, if lower, the maximum rate permitted by law) and shall be treated as principal for the purposes of Section 6 hereof until paid.

Section 2. Note Purchase Agreement. This Note has been issued pursuant to a Note Purchase Agreement (the "Note Purchase Agreement") dated as of the date hereof by and among the Company and the Holder. The Company shall keep or cause to be kept at its principal office appropriate records for the recordation of the name and address of the Holder, which address may be changed from time to time effective ten (10) days after receipt of written notice of such change from the Holder.

Section 3. Default. The occurrence of one or more of the following events shall constitute an event of default ("Event of Default"):

1. The Company shall fail to pay any of the Obligations when the same shall have become due and payable.
2. The Company shall fail to pay any of its material debts or other material obligations (other than the Obligations under this Note) when the same shall have become due and payable.
3. The entry of a decree or order by a court having jurisdiction adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization arrangement, adjustment, or composition of or in respect of the Company under the Bankruptcy Act, as amended, or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, or trustee of the Company, or any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.
4. The institution by the Company of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Act, as amended, or any other applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, or trustee of the Company, or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

3.5 The Company shall (a) be in breach of any material term or provision of this Note; (b) be in breach under Section 12.2 of the Collaboration Agreement of even date herewith ("Collaboration Agreement"), which breach shall remain uncured as provided thereunder; or (c) be in breach of any material term or provision of the Note Purchase Agreement.

Section 4. Acceleration. Upon an Event of Default, all Obligations shall become immediately due and payable to the Holder without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Company.

Section 5. Prepayments. The Company may not prepay the amounts due hereunder prior to the third anniversary of this Note. After the third anniversary of this Note, and subject to Holder's right of conversion under Section 6 herein, the Company shall have the right to prepay the amounts due hereunder in whole or in part; provided that the Company meets the following conditions: (a) the Company shall provide the Holder not less than thirty (30) days prior written notice of each prepayment ("Prepayment Notice"), specifying the principal amount or amounts to be prepaid and the prepayment date, and (b) the Company shall pay on the prepayment date the interest accrued to date on the principal amount paid. Any Prepayment Notice shall be irrevocable and binding on the Company; provided any Prepayment Notice shall be deemed rescinded upon notice prior to the prepayment date that Holder intends to exercise its conversion rights.

Section 6. **Conversion**.

6.1 The Holder of this Note shall have the right, at the Holder's option, at any time after the first anniversary of this Note, upon written notice, to convert all of the principal amounts outstanding from time to time under this Note into the Company's common stock ("Common Stock") at a price per share ("Original Conversion Price") equal to the lower of: (x) $28.175; and (y) 110% of the Fair Market Value (as hereinafter defined) of a share of Common Stock. "Fair Market Value" of a share of Common Stock means: (i) if the Company's stock is traded on NASDAQ or a national securities exchange, the average closing price for such share of Common Stock on such exchange for the twenty (20) trading days immediately prior to the applicable date of conversion, or (ii) if the Company's stock is not traded on NASDAQ or a national securities exchange, the fair market value of the Company's stock on the applicable date of conversion as determined in good faith by the Company's Board of Directors.

6.2 In the event of an exercise of the Holder's rights of conversion under this Section 6, the Holder shall irrevocably be obligated to convert all of the principal amounts then outstanding under this Note and the Company shall, as promptly as practicable after the surrender, but in no event more than fourteen (14) days after the delivery of the Note for conversion, deliver to the Holder a certificate or certificates representing the number of fully paid and nonassessable shares of Common Stock of the Company into which this Note shall be converted.

6.3 The number of shares of Common Stock which shall be delivered on conversion of principal under this Note shall be an amount determined by dividing the principal under this Note by the Original Conversion Price (or the Conversion Price (as defined below), as determined in accordance with this Section 6), and rounding the result down to the nearest share. The conversion price from time to time specified in Section 6.1 above may be adjusted from time to time as provided in Section 9, and any adjusted conversion price shall be the "Conversion Price."

6.4 No fractional shares of stock or scrip shall be issued upon conversion of this Note. Instead of any fractional shares of stock which would otherwise be issuable upon conversion of this Note, the Company shall pay in cash an amount equal to the fractional share multiplied by the Conversion Price in respect of such fractional interest.

Section 7. Assignment, Exchange, or Loss of Note. Subject to any transfer restrictions herein, upon presentation and surrender of this Note to the Company at its principal office with a duly executed request for assignment and funds sufficient to pay any transfer tax, the Company shall, without charge, execute and deliver a new Note in the name of the assignee named in such instrument of assignment and this Note shall promptly be canceled.

Section 8. Rights of the Holder. The Holder shall not, by virtue of the provisions in this Note, be entitled to any rights of a stockholder in the Company, either at law or equity.

Section 9. Adjustments. In case the Company shall, after the receipt of notice pursuant to Section 6.1 but prior to the conversion thereunder: (i) pay a dividend or make a distribution on the Common Stock payable in common shares, (ii) subdivide the outstanding Common Stock into a greater number of shares, (iii) combine the outstanding Common Stock into a lesser number of shares, or (iv) issue by reclassification of the Common Stock any common shares of the Company, the Holder of this Note shall thereafter be entitled, upon conversion, to receive the number and kind of shares which, if this Note had been converted immediately prior to the happening of such event, the Holder would have owned upon such conversion and been entitled to receive upon such dividend, distribution, subdivision, combination, or reclassification. Such adjustment shall become effective on the day next following (x) the record date of such dividend or distribution or (y) the day upon which such subdivision, combination, or reclassification shall become effective.

Section 10. Restrictions on Transfer. This Note has not been registered under the Securities Act. This Note, or any right hereunder, may not be enforced against the Company by any Holder, except the original Holder herein, (i) unless there is an effective registration covering such note or underlying shares under the Securities Act and applicable state securities laws, (ii) unless the Company receives an opinion of an attorney acceptable to the Company or its agents, that the proposed transfer of the Note complies with the requirements of the Securities Act and any relevant state securities law, or (iii) unless the transfer is made pursuant to Rule 144 under the Securities Act.

Section 11. Notices. All notices and other communications required or permitted under this Note shall be validly given, made, or served if in writing and delivered personally, via overnight courier or sent by registered mail, to the Company at the following address:

Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, California 94083-0511
Attn: Chief Executive Officer

With a copy to:

Exelixis, Inc.
170 Harbor Way
P.O. Box 511
South San Francisco, California 94083-0511
Attn: General Counsel

All notices and other communications required or permitted under this Note shall be validly given, made or served if in writing and delivered personally, via overnight courier or sent by registered mail, to the Holder at the following address:

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555-3606
Attn: Chief Executive Officer

With a copy to:

Protein Design Labs, Inc.
34801 Campus Drive
Fremont, California 94555-3606
Attn: General Counsel

Changes to a party's address information provided herein shall be effected by notice to the other party as provided herein.

Section 12. Law Governing. This Note shall be governed by and construed in accordance with the internal laws of the State of California.

Section 13. Titles and Captions; Presumption. All section titles or captions contained in this Note are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Note. This Note or any section thereof shall not be construed against any party due to the fact that said Note or any section thereof was drafted by said party.

Section 14. Computation of Time. In computing any period of time pursuant to this Note, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday, or legal holiday.

Section 15. Further Assurances. The Company shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Note.

Section 16. Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

IN WITNESS WHEREOF, a duly authorized officer of Exelixis, Inc. has executed this Note to be effective on this 22nd day of May 2001.

EXELIXIS, INC.

____
George A. Scangos
Chief Executive Officer

Exhibit 10.3

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT (the "Agreement") is dated as of May 22, 2001 (the "Effective Date") by and between **Exelixis, Inc.**, a Delaware corporation having its principal place of business at 170 Harbor Way, P.O. Box 511, South San Francisco, California 94083-0511 (the "Company") and **Protein Design Labs, Inc.**, a Delaware corporation having its principal place of business at 34801 Campus Drive, Fremont, California 94555-3606 (the "Holder").

Recitals

A. Pursuant to the terms of the Convertible Note (the "Note"), dated as of even date herewith between the Company and the Holder, the Holder has loaned to the Company the principal sum of Thirty Million Dollars ($30,000,000) (the "Principal Amount").

B. The Company has agreed to issue the Note pursuant to the terms set forth in this Agreement.

Now, Therefore, in consideration of the premises and promises herein contained and in order to induce the Holder to loan to the Company the Principal Amount, the Company agrees with the Holder as follows:

1. AUTHORIZATION AND SALE OF NOTES

1.1 Authorization of Notes. On or before the date hereof the Company shall authorize the issuance of the Note in the form attached to this Agreement as Exhibit A in the Principal Amount.

1.2 Sale of Note. Subject to the terms and conditions hereof, the Company will issue and sell to the Holder, and the Holder will purchase from the Company for the Principal Amount, the Note. The Note and the shares of common stock of the Company (the "Shares") issued upon conversion of the Note are sometimes collectively referred to herein as the "Securities."

2. CLOSING DATE; DELIVERY

2.2 Closing Date. Subject to the terms and conditions of this Agreement, the purchase and sale of the Note hereunder shall take place at 3:00 p.m. local time at the offices of the Company, on the date hereof or at such other time and place as the Company and the Holder may agree (the "Closing"). The date of the Closing is hereinafter referred to as the "Closing Date."

2.3 Delivery. At the Closing, the Company will deliver to the Holder the Note against payment of the Principal Amount therefor by wire transfer in immediately available funds:

Bank: Silicon Valley Bank, Santa Clara, CA

ABA Routing: 121-140-399

Acct Number: 33001-60643

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Holder as follows:

3.1 Organization and Standing. The Company:

(a) is a corporation duly organized, validly existing, authorized to exercise all its corporate powers, rights, and privileges, and in good standing under the laws of the State of Delaware; and

(b) has the corporate power and corporate authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

3.2 Authorization and Validity. All corporate action on the part of the Company, its officers, directors, and stockholders necessary for the authorization, execution, delivery, and performance of all of the Company's obligations under this Agreement, the Note and all documents, instruments and agreements executed in connection therewith (the "Loan Documents") and for the authorization, issuance, and delivery of the Note has been taken and the Loan Documents constitute legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

3.3 Corporate Power. The Company has all requisite legal and corporate power and authority to execute and deliver the Loan Documents, to sell and issue the Note hereunder, and to carry out and perform its obligations under the Loan Documents.

3.4 Validity of Securities. The Securities, when issued, sold, and delivered in compliance with the terms and for the consideration expressed in this Agreement, will be duly authorized and validly issued (including without limitation, but subject to the accuracy of the representations of Holder herein, issued in compliance with all applicable federal and state securities laws), fully paid and nonassessable. The Securities will be free and clear of all liens and encumbrances other than

any liens or encumbrances created by or imposed thereon by the Holder; provided, however, that the Securities shall be subject to restrictions on transfer under state and/or federal securities laws. The Securities are not subject to any preemptive rights or rights of first refusal. The Shares have been duly authorized and reserved for issuance upon conversion of the Note. The certificate evidencing the Shares will be in due and proper form.

3.5 Securities Law Compliance. Subject to the accuracy of the representations and warranties of the Holder set forth in Section 4, the offer, issue, and sale of the Securities are exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended, (the "Securities Act") and the qualification requirements, if any, of applicable state securities laws.

3.6 No Conflict. The execution, delivery, and performance of the Loan Documents, the sale and issuance of the Note and the consummation of the transactions contemplated hereby and thereby will not (a) result in any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice: (i) any provision of the Company's Certificate of Incorporation or Bylaws; (ii) any provision of any judgment, decree, or order to which the Company is a party or by which it is bound; (iii) any material contract, obligation, or commitment to which the Company is a party or by which it is bound; or (iv) any material statute, rule, or governmental regulation applicable to the Company, (b) (i) require any consent, approval, authorization or other order of, or qualification with, any court or governmental body or agency (except such as may be required under applicable securities laws), or (ii) result in the imposition or creation of (or the obligation to create or impose) a lien under, any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries or their respective property is bound.

3.7 Properties. The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them that is material to the business of the Company and its subsidiaries, in each case free and clear of all liens and defects, except as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries.

3.8 SEC Filings, Financial Statements. The Company has filed with the Securities and Exchange Commission (the "SEC") all required quarterly reports on Form 10-Q and annual reports on Form 10-K, registration statements, documents, and reports required to be filed by it with the SEC or, if not required to be filed, such other reports and documents as have otherwise been filed by the Company (collectively, the "SEC Reports"). To the knowledge of the Company, all of the SEC Reports complied as to form, when filed, in all material respects with the applicable provisions of the Securities Act, and the Securities Exchange Act of 1934, as amended. As of their respective dates, the SEC Reports did not contain 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, in light of the circumstances under which they were made, not misleading. Each of the consolidated financial statements (including notes thereto) contained in the SEC Reports (a) was prepared in accordance with generally accepted accounting principals applied on a consistent basis throughout the periods involved (except as indicated in the notes thereto) and (b) fairly presented the financial position of the Company as at the respective dates thereof.

3.9 No Material Adverse Changes. Since the filing of the Company's Registration Statement on Form S-4, other than as set forth in the Company's SEC Reports, (a) there has not occurred any material adverse change: (i) in the financial condition or operations of the Company and its subsidiaries, taken as a whole, or (ii) in the capital stock or long-term debt of the Company or any of its subsidiaries, taken as a whole, except as contemplated under this Agreement or development, that would reasonably be expected to involve a material adverse change in the financial condition or operations of the Company and its subsidiaries, taken as a whole; (b) the Company and its subsidiaries, taken as a whole, have not sustained any material loss or interference with its assets, businesses or properties (whether owned or leased) from fire, explosion, earthquake, flood or other calamity, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree; and (c) since the date of the latest consolidated balance sheet included in the SEC Reports, except as reflected therein, the Company has not (A) issued any securities other than the issuance of securities pursuant to the grant of or the exercise of options granted under stock option plans or agreements existing prior to the date of the latest consolidated balance sheet included in the SEC Reports, or (B) declared or paid any dividend or made any distribution on any shares of its capital stock or redeemed, purchased or otherwise acquired or agreed to redeem, purchase or otherwise acquire any shares of capital stock, except to the extent provided under any stock option plans or agreements existing prior to the latest date of the consolidated balance sheet included in the SEC Reports.

4. **REPRESENTATIONS AND WARRANTIES OF THE HOLDER**

Holder hereby represents and warrants to the Company as follows:

4.1 Authorization. When executed and delivered by the Holder, and assuming execution and delivery by the Company, the Agreement will constitute a valid obligation of such Holder, enforceable in accordance with its terms.

4.2 Brokers and Finders. Holder has not retained any investment banker, broker, or finder in connection with the transactions contemplated by this Agreement.

4.3 Investment. This Agreement is made with the Holder in reliance upon its representations to the Company, which by the Holder's execution of this Agreement Holder hereby confirms, that the Securities to be received by the Holder will be

acquired for investment for the Holder's own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof, and that the Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Holder further represents that it has no contract, undertaking, agreement, or arrangement with any person to sell, transfer, or grant participation to such person or to any third person, with respect to any of the Securities.

4.4 No Registration. Holder understands and acknowledges that the offering of the Securities pursuant to this Agreement will not be registered under the Securities Act on the grounds that the offering and sale of securities contemplated by this Agreement are exempt from registration pursuant to Section 4(2) of the Securities Act, and that the Company's reliance upon such exemption is predicated upon Holder's representations set forth in this Agreement

4.5 Limitations on Transferability. Holder covenants that in no event will it dispose of any of the Securities (other than pursuant to Rule 144 promulgated by the SEC under the Securities Act ("Rule 144") or any similar or analogous rule) unless and until (i) Holder shall have notified the Company of the proposed disposition, and (ii) if requested by the Company, Holder shall have furnished the Company with an opinion of counsel satisfactory in form and substance to the Company and the Company's counsel, in the reasonable exercise of their judgment, to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken. Notwithstanding the limitations set forth in the foregoing sentence, if Holder is a limited liability company or a partnership it may transfer Securities to its members or constituent partners or a retired partner of such partnership who retires after the date hereof, or to the estate of any such member or partner or retired partner or transfer by gift, will, or intestate succession to any such member's or partner's spouse or lineal descendants or ancestors without the necessity of registration or opinion of counsel if the transferee agrees in writing to be subject to the terms of this Agreement to the same extent if such transferee were a Holder; provided, however, that Holder hereby covenants not to effect such transfer if such transfer either would invalidate the securities laws exemptions pursuant to which the Securities were originally offered and sold or would itself require registration under the Securities Act or applicable state securities laws. Each certificate evidencing the Securities transferred as above provided shall bear the appropriate restrictive legends set forth in Sections 7.6 and 7.7(a) below, except that such certificate shall not bear such legend if the transfer was made in compliance with Rule 144 or if the opinion of counsel referred to above is to the further effect that such legend is not required in order to establish compliance with any provisions of the Securities Act.

4.6 Experience. Holder represents that: (i) it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities; (ii) it has received all the information it has requested from the Company and considers necessary or appropriate for deciding whether to purchase the Securities; (iii) it has had the opportunity to discuss the Company's business management, and financial affairs with its management, (iv) it has the ability to bear the economic risks of its prospective investment; and (v) it is able, without materially impairing its financial condition, to hold the Securities for an indefinite period of time and to suffer a complete loss on its investment.

4.7 Accredited Holder. Holder presently qualifies, and will as of the Closing Date qualify, as an "accredited investor" within the meaning of Regulation D of the rules and regulations promulgated under the Securities Act.

5. CONDITIONS OF THE HOLDER'S OBLIGATIONS AT CLOSING

The obligations of the Holder under Section 1 of this Agreement are subject to the fulfillment at or before the Closing of the following conditions, any of which may be waived by the Holder:

5.1 Representations and Warranties. The representations and warranties of the Company contained in Section 3 shall be true on and as of the Closing with the same effect as if made on and as of the Closing.

5.2 Performance. The Company shall have performed or fulfilled all agreements, obligations, and conditions contained in the Loan Documents and required to be performed or fulfilled by the Company before the Closing.

6. CONDITIONS OF THE COMPANY'S OBLIGATIONS AT CLOSING

The obligations of the Company under Section 1 of this Agreement are subject to the fulfillment at or before the Closing of the following condition, which may be waived in writing by the Company:

6.1 Representations and Warranties. The representations and warranties of the Holder contained in Section 4 shall be true on and as of the Closing with the same effect as if made on and as of the Closing.

7. MISCELLANEOUS

7.1 Governing Law. This Agreement shall be governed by, and be construed in accordance with, the laws of the State of California, excluding those laws that direct the application of the laws of another jurisdiction.

7.2 Survival; Termination. The warranties and representations of the parties contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing for until the earlier of: (a) the payment in full of all outstanding principal and interest under the Note, or (b) the conversion of the Note into Shares, provided, however, that such representations and warranties need only be accurate as of the date of such execution and delivery and as

of the Closing. This Agreement shall be terminated and of no further force and effect upon earlier of: (a) the payment in full of all outstanding principal and interest under the Note, or (b) the conversion of the Note into Shares.

7.3 Successors and Assigns. Except as otherwise 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.

7.4 Entire Agreement; Indemnity; Waiver.

(a) Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and supersede any and all prior and contemporaneous agreements, understandings, discussions and correspondence.

(b) Waiver. Holder's failure, at any time or times hereafter, to require strict performance by the Company of any provision of this Agreement shall not waive, affect or diminish any right of the Holder thereafter to demand strict compliance and performance therewith. Any suspension or waiver by the Holder of a default under the Agreement or a default under any of the other Loan Documents shall not suspend, waive or affect any other default under this Agreement or any other default under any of the other Loan Documents, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants and representations of the Company contained in this Agreement or any of the other Loan Documents and no default under this Agreement or default under any of the other Loan Documents shall be deemed to have been suspended or waived by the Holder unless such suspension or waiver is in writing signed by an officer of the Company, and directed to the Holder.

7.5 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by Federal Express or other national overnight delivery service or otherwise delivered by hand or by messenger, addressed (a) if to the Holder, at Holder's address set forth below or at such other address as the Holder shall have furnished to the Company in writing or (b) if to any other holder of any Note, at such address as such holder shall have furnished the Company in writing or, until any such holder so furnishes an address to the Company, then to and at the address of the last holder of such Note who has so furnished an address to the Company, or (c) if to the Company, at its address set forth below, or at such other address as the Company shall have furnished to the Holder.

Holder:	**Company:**
Protein Design Labs, Inc.	Exelixis, Inc.
34801 Campus Drive	170 Harbor Way
Fremont, CA 94555-3606	P. O. Box 511
Attn: General Counsel	South San Francisco, CA 94083-0511
	Attn: General Counsel

7.6 California Corporate Securities Law. THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM THE QUALIFICATION BY SECTION 25100, 25102, OR 25105 OF THE CALIFORNIA CORPORATIONS CODE.

7.7 Legends.

(a) All certificates for the Securities shall bear a legend substantially similar to the following:

> "The securities represented hereby have not been registered under the Securities Act of 1933, as amended ("Securities Act"). Such securities may not be transferred unless a Registration Statement under the Act is in effect as to such transfer or, in the opinion of counsel for the Company, registration under the Act is unnecessary in order for such transfer to comply with the Act or unless sold pursuant to Rule 144 of the Act."

(b) The certificates evidencing the Securities shall also bear any legend required pursuant to any state, local, or foreign law governing such securities.

7.8 Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

COMPANY:

EXELIXIS, INC.,
a Delaware corporation

____

George A. Scangos

Chief Executive Officer

HOLDER:

PROTEIN DESIGN LABS, INC.,
a Delaware corporation

____

Laurence Jay Korn

Chairperson and Chief Executive Officer

STANDARD COMMERCIAL LEASE AGREEMENT Approximately 27,259 square feet

(REV. - 6/85) 3850 Annapolis Lane

Plymouth, Minnesota 55447

LEASE AGREEMENT

THIS LEASE AGREEMENT is between ST. PAUL PROPERTIES, INC., a Delaware corporation ("Landlord") and PROTEIN DESIGN LABS, INC., a Delaware corporation ("Tenant").

W I T N E S S E T H:

1. **Premises and Term.** In consideration of the obligation of Tenant to pay rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord certain premises situated within the County of Hennepin, State of Minnesota, as shown outlined in red on the plan attached hereto as EXHIBIT A (the "Premises"), which is located in a building or buildings (collectively, the "Building") situated on the real property described on EXHIBIT A-1 attached hereto (the "Property") and incorporated herein by reference, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way pertaining to the leased premises.

   TO HAVE AND TO HOLD the same for a term commencing on the "commencement date," as hereinafter defined, and ending February 28, 2009, unless sooner terminated as hereinafter provided.

   The commencement date shall be June 1, 2001. Taking of possession by Tenant shall be deemed conclusively to establish that the Premises have been completed and that the Premises are in good and satisfactory condition, as of when possession was so taken. Tenant acknowledges that no representations as to the condition of the Premises or the Building have been made by Landlord, unless such are expressly set forth in this lease. On or before such commencement date Tenant shall, upon demand, execute and deliver to landlord a letter of acceptance of delivery of the Premises, on Landlord's standard form. Landlord and Tenant acknowledge that all leasehold improvements to be placed in the Premises shall be constructed and placed therein by Tenant and/or Tenant's contractors, pursuant to EXHIBIT B attached hereto and made a part hereof, and, notwithstanding anything in the Lease to the contrary, Landlord's obligation to complete the Premises shall be satisfied by Landlord's delivery to Tenant of the Building shell as currently constructed and in an "AS- IS" condition.

2. **Base Rent and Security Deposit.**

   A. Tenant agrees to pay to Landlord base rent for the Premises, in advance, without demand, deduction or set off, for the entire term hereof at the rate of

      $13,061.60 per month for the period beginning on the commencement date and ending on the last day of the forty-eighth (48th) full calendar month thereafter,

      $15,333.19 per month for the period beginning on the first day of the forty-ninth (49th) full calendar month of the term and ending on the last day of the eighty-fourth (84th) full calendar month of the term; and

      $16,468.98 per month for the period beginning on the first day of the eighty-fifth (85th) full calendar month of the term and ending on the last day of the ninety-third (93rd) full calendar month of the term (such last day of the ninety-third (93rd) full calendar month of the term or any earlier date as to which the term is terminated as provided herein is hereinafter the "Expiration Date"),

      except that the monthly installment which otherwise shall be due on the commencement date shall be due and payable on the date hereof. Thereafter, one such monthly installment shall be due and payable without demand on or before the first day of each calendar month succeeding the commencement date during the term hereof, except that the rental payment for any fractional calendar month at the commencement or end of the lease period shall be prorated.

   B. In addition, Tenant agrees to deposit with Landlord on the date hereof the sum of Zero Dollars ($0.00), which sum shall be held by Landlord, without interest, as security for the performance of Tenant's covenants and obligations under this lease, it being expressly understood and agreed that such deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon the occurrence of any event of default by Tenant, Landlord may, from time to time, without prejudice to any other remedy provided herein or provided by law, apply such fund to any arrears of rent or other payments due Landlord hereunder, and any other damage, injury, expense or liability caused by such event of default without waiving such default; and Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount. Although the security deposit shall be deemed the property of Landlord, any remaining balance of such deposit shall be returned by Landlord to Tenant at such time after termination of this lease that all of Tenant's obligations under this lease have been fulfilled. If the Property is conveyed by Landlord and Landlord delivers said deposit to Landlord's grantee, Landlord shall have no further liability to Tenant with respect to said deposit and its application or return.

3. **Use.** The premises shall be used only for the purpose of receiving, manufacturing, storing, shipping and selling (other than retail) products, materials and merchandise made and/or distributed by Tenant and for such other lawful purposes as may be incidental thereto; provided however that Tenant agrees that if the City of Plymouth or any other entity notifies Tenant that manufacturing is in violation of the zoning code of the City of Plymouth, Tenant shall take such steps as necessary to cause the operation of Tenant's business in the Premises to comply with said zoning code; and provided further that Tenant further agrees that any such notification by the City of Plymouth or other entity shall not work a constructive eviction or entitle Tenant to terminate this Lease and there shall be no reduction in base rent or Operating Costs (as hereinafter defined) as a result of such violation and/or such corrective steps. Outside storage, including without limitation, trucks and other vehicles, garbage containers and outdoor furniture are prohibited without Landlord's prior written consent. Tenant shall at its own cost and expense obtain any and all licenses and permits necessary for any such use. Tenant shall comply with all

governmental laws, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisance in or upon, or connected with, the Premises, all at Tenant's sole expense. Tenant shall not receive, store or otherwise handle on the Premises any product, material or merchandise which is explosive or highly flammable. Tenant will not permit the Premises to be used for any purpose or in any manner (including without limitation any method of storage) which would render the insurance on the Building or the Property void or the insurance risk more hazardous or cause the State Board of Insurance or other insurance authority to disallow any sprinkler credits. If any increase in the fire and extended coverage insurance premiums paid by Landlord for the Building is caused by Tenant's use and occupancy of the Premises, then Tenant shall pay to landlord as additional rent the amount of such increase. Notwithstanding Tenant's obligation to comply with laws, Tenant shall have no obligation to remedy any instances of noncompliance as to the Building shell which Landlord is obligated to repair pursuant to Paragraph 1 above, and in no event shall Tenant have any liability for toxic or hazardous materials except to the extent caused by Tenant, its agents, servants, contractors, licensees or invitees except, as to such invitees Tenant shall only have liability if Tenant knew or reasonably should have known that its invitee was bringing Hazardous Substances (as defined in Paragraph 26) onto the Property.

4. **Operating Costs.**

A. Upon demand, Tenant shall pay to Landlord, as additional rent during the term hereof, Tenant's proportionate share of Operating Costs, as hereinafter defined, calculated on the basis of the ratio set forth in Paragraph 4E.

As used in this lease, the term "Operating Costs" shall mean any and all expenses, costs and disbursements of any kind and nature whatsoever incurred by Landlord in connection with the ownership, management, maintenance, operation and repair of the Property or the Building which landlord shall pay or become obligated to pay in respect of a calendar year (regardless of when such Operating Costs were incurred). Operating Costs shall include, without limitation, the costs of maintenance, repairs, and replacements to the Building including roof, walls, downspouts, gutters, painting, and sprinkler systems; the costs of maintaining and repairing parking lots, parking structures and easements; property management fees, salaries, fringe benefits and related costs payable to employees of Landlord whose duties are connected with the Property; insurance costs, all heating and air conditioning costs, electricity, sewer and water and other utility costs not separately metered to tenants, landscape maintenance, trash and snow removal, taxes, as defined in Paragraph 4F, and costs and expenses incurred by Landlord in protesting any assessments, levies or the tax rate, provided, however, that Operating Costs shall not include the following: (i) costs of alterations of any tenant's premises; (ii) costs of curing construction defects; (iii) depreciation; (iv) interest and principal payments on mortgages, and other debt costs; (v) real estate brokers' leasing commissions or compensation; (vi) any cost or expenditure (or portion thereof) for which landlord is reimbursed, whether by insurance proceeds or otherwise; and (vii) cost of any service furnished to any other occupant of the Building which landlord does not provide to Tenant hereunder. Notwithstanding anything contained herein to the contrary, depreciation of any structural repairs or replacements to the Building, or of any capital improvements made after the date of this lease which are intended to reduce Operating Costs or of any capital improvements which are required under any governmental laws, regulations, or ordinances which were not applicable to the Building at the time it was constructed, shall be included in Operating Costs. The useful life of any such improvement, structural repair or replacement shall be reasonably determined by Landlord. In addition, interest on the undepreciated cost of any such improvement, structural repair or replacement (at the prevailing construction loan rate available to Landlord on the date the cost of such improvement was incurred) shall also be included in Operating Costs. Notwithstanding anything to the contrary contained in the Lease, Operating Costs shall, in no event, include the following:

i. Repairs or other work occasioned by fire, windstorm or other casualty except the amount of any "deductible" payable under insurance policies and except glass breakage and/or earthquake damage if not insured against, or by exercise of the right of eminent domain;

ii. Leasing commissions, attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants or other occupants;

iii. Expenses of renovating or otherwise improving or decorating, painting or redecorating space for tenants or other occupants or vacant space;

iv. Landlord's costs of electricity and other services sold to tenants of the building and for which Landlord is entitled to be reimbursed by tenants as an additional charge or rental over and above the basic rent payable under the lease with such tenant, other than that billed as rent escalation;

v. Depreciation;

vi. Costs of a capital nature, including, but not limited to, capital improvements, capital repairs, capital equipment, and capital tools all in accordance with generally accepted accounting principles, except for the yearly amortized portion of said capital costs;

vii. Expenses in connection with services or other benefits of a type which are not provided Tenant but which are provided to another tenant or occupant of the Building;

viii. Costs incurred due to violation by Landlord or any other tenant of the terms and conditions of this Lease;

ix. Overhead and profit increment paid to subsidiaries or affiliates of Landlord for services on or the real property, to the extent only that the costs of such services exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate;

x. Interest on debt or amortization payments on any mortgage or mortgages, and rental under any ground or underlying leases or lease; or rental or lease payments for parking;

xi. Landlord's general corporate overhead and general administrative expenses;

xii. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;

xiii. All items and services for which Tenant reimburses Landlord or pays third persons; and

xiv. Advertising and promotional expenditures.

B. Promptly after the commencement of this lease and during December of each year or as soon thereafter as practicable, Landlord shall give Tenant written notice of its estimate of amounts payable under Paragraph 4A for the ensuing calendar year. On or before the first day of each month thereafter, Tenant shall pay to Landlord as additional rent one/twelfth ($1/12^{th}$) of such estimated amounts, provided that if such notice is not given in December, Tenant shall continue to pay on the basis of the prior year's estimate until the first day of the month after the month in which such notice is given. If at any time it appears to Landlord that the amounts payable under Paragraph 4A for the then current calendar year will vary from its estimate by more than five percent (5%). Landlord may, by written notice to Tenant, revise its estimate for such year, and subsequent payments by Tenant for such year shall be based upon such revised estimate.

Within ninety (90) days after the close of each calendar year or as soon thereafter as practicable, Landlord shall deliver to Tenant a summary of the total Operating Costs for the previous calendar year and Tenant's proportionate share thereof. If such summary shows an amount due from Tenant that is less than the estimated payments previously paid by Tenant, it shall be accompanied by a refund of the excess to Tenant. If such summary shows an amount due from Tenant that is more than the estimated payments previously paid by Tenant, Tenant shall pay the deficiency to Landlord, as additional rent, within thirty (30) days after delivery of the summary.

C. Tenant or its representatives shall have the right to examine Landlord's books and records of Operating Costs during normal business hours within sixty (60) days following the furnishing of the summary to Tenant. Unless Tenant takes written exception to any item within ninety (90) days following the furnishing of the summary to Tenant (which item shall be paid in any event), such summary shall be considered as final and accepted by Tenant. If it is determined that Tenant paid Operating Costs in excess of one hundred and five percent (105%) of actual Operating Costs, Landlord shall pay the reasonable costs of Tenant's audit within thirty (30) days after receipt of copies of invoices with proof of payment detailing such costs.

D. If Landlord selects the accrual accounting method rather than the cash accounting method for operating expense purposes, Operating Costs shall be deemed to have been paid when such expenses have accrued.

E. For purposes hereof the Premises total 27,259 square feet. The Building totals 106,070 square feet. Tenant's "proportionate share" of 25.7% is arrived at by dividing 106,070 into 27,259.

F. Landlord agrees to pay before they become delinquent all taxes, installments of special assessments and governmental charges of any kind and nature whatsoever (herein collectively referred to as "taxes") lawfully due and payable with respect to the Building and the Property.

G. If at any time during the term of this lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any taxes, assessments or governmental charges levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings on the Property, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "taxes" for the purposes hereof.

5. **Landlord's Responsibilities.** Landlord shall maintain in good repair, reasonable wear and tear and any casualty covered by the provisions of Paragraph 12A excepted, all parts of the Building, other than tenants' premises, making all necessary repairs and replacements, whether ordinary or extraordinary, structural or nonstructural, including roof, foundation, walls, downspouts, gutters, sprinkler system; regularly mow any grass, remove weeds and perform general landscape maintenance; and maintain and repair the parking lot and driveway areas. Tenant shall immediately give Landlord written notice of any defect or need for repairs after which Landlord shall have a reasonable opportunity to repair the same or cure such defect. Landlord's liability with respect to any defects, repairs or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance or the curing of such defect. The term "walls" as used herein shall not include windows, glass or plate glass, doors, special store fronts or office entries.

6. **Tenant's Responsibilities.**

A. Tenant shall at its own cost and expense keep and maintain all parts of the Premises (except as provided in Paragraph 5) in good condition, promptly making all necessary repairs and replacements, including but not limited to, windows, glass and plate glass, doors, any special entry, interior walls and finish work, floors and floor covering, heating and air conditioning systems, dock boards, truck doors, dock bumpers, plumbing work and fixtures, termite and pest extermination, regular removal of trash and debris and keeping the parking areas, driveways, alleys and the whole of the Premises in a clean and sanitary condition. Tenant shall not be obligated to repair any damage caused by fire, tornado or other casualty covered by the insurance to be maintained by Landlord pursuant to Paragraph 12A, except that Tenant shall be obligated to repair all wind damage to glass unless caused by a tornado.

B. Tenant shall not, without Landlord's prior written approval, damage any demising wall or disturb the integrity and support provided by any demising wall and shall, at its sole cost and expense, promptly repair any damage or injury to any demising wall caused by Tenant or its employees, agents or invitees.

C. Tenant and its employees, customers and licensees shall have the nonexclusive right to use, in common with the other parties occupying the Building, common parking areas, if any (exclusive of any parking or work load areas designated or to be designated by Landlord for the exclusive use of Tenant or other tenants occupying or to be occupying other portions of the Building), driveways and alleys adjacent to the Building, subject to such reasonable rules and regulations as Landlord may from time to time prescribe.

D. Intentionally Deleted.

E. Tenant shall, at its own cost and expense, either (1) enter into a regularly scheduled preventive maintenance/service contract with a qualified maintenance contractor; or (2) undertake its own program, utilizing its own employees, for servicing all hot water, heating and air conditioning systems and equipment serving the Premises. If Tenant elects to proceed under clause (1) above, the maintenance contractor and the contract must be approved by Landlord, and must include all services suggested by the equipment manufacturer in the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) within

thirty (30) days after the date Tenant enters into such maintenance/service contract. If Tenant elects to proceed under clause (2) above, Tenant understands and agrees that:

(x) all costs of maintaining and replacing the Tenant HVAC Equipment and the Existing HVAC Equipment (as those terms are defined in Paragraph 28 hereof) shall be borne solely by Tenant.

(y) notwithstanding anything to the contrary in this Lease, Tenant shall be liable to Landlord for all costs incurred by Landlord in repairing or replacing the roof of the Building in excess of those costs which would have been incurred by Landlord if Tenant had not placed the Tenant HVAC Equipment on the roof of the Building; and

(z) On or before November 30 of each of 2004 and 2007, and simultaneously with any request for (i) an assignment of this Lease; (ii) a sublease of all or a portion of the Premises; or (iii) early termination of this Lease, Tenant shall deliver to Landlord a written report on the condition of the Tenant HVAC Equipment and the Existing HVAC Equipment, which report shall be based on an inspection of the condition of the Tenant HVAC Equipment performed by a qualified maintenance contractor and which report shall contain such qualified maintenance contractor's estimate of the remaining useful life of the Tenant HVAC Equipment and the Existing HVAC Equipment.

F. Tenant shall upon demand by Landlord, pay, as additional rent, the cost and expense of repairing any damage to the Premises resulting from and/or caused in whole or in part by the negligence or misconduct of Tenant, its agents, servants, employees, patrons, customers, or any other person entering upon the property as a result of Tenant's business activities or caused by Tenant's default hereunder to the extent the cost of repairing such damage is not reimbursed by the insurance to be maintained by Landlord under Paragraph 12A.

7. **Alterations.** Tenant shall not make any alterations, additions or improvements to the Premises (including but not limited to roof and wall penetrations) without the prior written consent of Landlord, except that Tenant may make alterations which do not cost, in the aggregate, more than Five Thousand Dollars ($5,000.00) each; provided such alterations do not affect the Building structure or systems, including, but not limited to, HVAC, plumbing, mechanical and electrical systems (collectively, the "Building Systems"), in which case Landlord's prior written consent must be obtained, which consent shall not be unreasonably withheld or delayed. Tenant may, without the consent of Landlord, but at its own cost and expense and in a good workmanlike manner erect such shelves, bins, machinery and trade fixtures as it may deem advisable, without altering the basic character of the Building and without overloading or damaging such Building, and in each case complying with all applicable governmental laws, ordinances, regulations and other requirements. Prior to commencing any such alterations, additions or improvements Tenant shall provide such assurances to Landlord, including but not limited to waivers of lien, surety company performance and payment bonds and personal guaranties of persons of substance, as Landlord shall reasonably require to assure payment of the costs thereof and to protect Landlord against any loss from mechanics', laborers', materialmen's or other liens. All alterations, additions, improvements and partitions, including, without limitation, all telephone and data communications cabling erected by Tenant shall be and remain the property of Tenant during the term of this lease and, at Landlord's sole and absolute discretion, and by notice given to Tenant prior to the end of the term, Tenant shall, as designated by Landlord, remove that portion (which may be none, some or all) of the alterations, additions, partitions and improvements, including, without limitation (a) the improvements to be constructed pursuant to the Work Letter Agreement attached hereto as EXHIBIT B; (b) all equipment, including, without limitation, all Tenant HVAC Equipment, as contemplated by Paragraphs 6.E.; and (c) all telephone and data communications cabling, including, without limitation, the fiberoptic cable installed by Tenant pursuant to that certain License Agreement dated October 19, 1999, to the extent placed thereon by Tenant or at Tenant's request or direction, and Tenant shall otherwise proceed in accordance with Paragraph 6.E. hereof. Any alterations, additions, improvements and partitions not designated by Landlord to be removed pursuant to this Paragraph shall become the property of Landlord as of the Expiration Date or earlier termination of this Lease and shall be delivered up to the Landlord with the Premises. All shelves, bins, machinery and trade fixtures installed by Tenant shall be removed by Tenant by the date of termination of this lease or upon earlier vacating of the Premises if required by Landlord; upon any such removal Tenant shall restore the Premises to their original condition. Any removals and restorations required by this Paragraph 7 shall be accomplished in a good workmanlike manner and shall not damage the primary structure qualities of the Building. All obligations of Tenant to restore the Premises shall be subject to the rights and obligations of the parties in the event of the occurrence of a casualty covered by Paragraph 12(b), condemnation pursuant to Paragraph 15.

8. **Signs/Window Coverings.** Tenant shall not, without the prior written consent of Landlord, install or affix any window coverings, blinds, draperies, signs, window or door lettering or advertising media of any type on the Property, the Building or in or on the Premises which are visible from the exterior of the Building. Any permitted signs shall be subject to any applicable governmental laws, ordinances, regulations and other requirements. Tenant shall remove any permitted signs and window coverings upon the termination of this lease. Any such installations and removals shall be made in such manner as to avoid injury or defacement of the Building and other improvements, and Tenant shall repair any injury or defacement, including without limitation discoloration, caused by such installation and/or removal.

9. **Inspection.** Landlord and Landlord's agents and representatives shall have the right to enter and inspect the Premises at any reasonable time upon four hours prior notice on business days and upon twenty- four hours prior notice on non-business days and, in accordance with Tenant's standard security procedures, except in the event of an emergency when no notice or compliance with Tenant's security procedures shall be required, for the purpose of ascertaining the condition of the Premises or in order to make such repairs as may be required or permitted to be made by Landlord under the terms of this lease. During the period that is six (6) months prior to the end of the term hereof, Landlord and Landlord's agents and representatives shall have the right to enter the Premises at any reasonable time for the purpose of showing the Premises and shall have the right to erect on the Premises a suitable sign indicating the Premises are available. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall arrange to meet with Landlord for a joint inspection of the Premises prior to vacating. In the event of Tenant's failure to give such notice or arrange such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises shall be conclusively deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

10. **Utilities.** Tenant shall pay for all water, gas, heat, light, power, telephone, sewer and sprinkler charges and other utilities and services separately metered for the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto and shall furnish and install all replacement electric light bulbs and tubes. Landlord shall in no event be liable for any interruption or failure of utility services on the Premises.

11. **Assignment and Subletting.**

A. Tenant shall not have the right to assign or pledge this lease or to sublet the whole or any part of the Premises, whether voluntarily or by operation of law, or permit the use or occupancy of the Premises by anyone other than Tenant, without the prior written

consent of Landlord, which consent shall not be unreasonably withheld or delayed, and such restrictions shall be binding upon any assignee or subtenant to which Landlord has consented. For the purpose of determining whether the withholding of Landlord's consent is reasonable, the following are the criteria by which Landlord will determine the acceptability of a proposed assignee or subtenant: (1) the occupancy of any assignee or subtenant is not, in Landlord's reasonable judgment, inconsistent with the character of the Building; (2) such assignee or subtenant shall assume in writing the performance of the covenants and obligations of Tenant hereunder; (3) a fully executed copy of any such assignment or sublease shall be immediately delivered to Landlord, but the making of such assignment or sublease shall not be deemed to release Tenant from the payment and performance of any of its obligations under this Lease; (4) such assignment or subletting is approved by any mortgagee holding a mortgage covering the Premises which reserves such right under its mortgage; (5) Tenant is not in default of this Lease on the date of the assignment or sublease; and (6) at least fifteen (15) days prior to the execution of any assignment or sublease (a) as to a proposed assignee or subtenant which is not an affiliate of Tenant, Landlord is given financial statements of the proposed assignee or subtenant, which financial statements shall show a financial condition equal to the lesser of (i) the financial condition shown in Tenant's audited financial statement dated as of December 31, 2000, a copy of which is attached hereto as EXHIBIT D; or (ii) the financial condition necessary to meet Landlord's then- current standards (including credit enhancements if then required by Landlord) for leasing space similar to the Premises to new tenants in Plymouth Business Center; or (b) as to a proposed assignee or subtenant which is an affiliate of Tenant, Tenant provides to Landlord, in form and substance satisfactory to Landlord, a guaranty of an affiliate of Tenant which has a net worth equal to or greater than Tenant's net worth as of the date of this Lease. For the purposes of this Lease, "affiliate" shall mean, with respect to a party, any person or entity that controls, is controlled by or is under common control with such party, with "control" and its derivatives meaning (x) as to a publicly held company, ownership of 5 percent or more of the voting interests of the entity in question; or (y) as to all other entities, 50 percent or more of the voting interests in the entity in question. In the event Tenant desires to sublet the Premises, or any portion thereof, or assign this lease, Tenant shall give written notice thereof to Landlord with a reasonable time prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease and copies of financial reports and other relevant financial information of the proposed subtenant or assignee. Notwithstanding any permitted assignment or subletting, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this lease. Upon the occurrence of an "event of default" (as hereinafter defined), if the Premises or any part thereof are then assigned or sublet, Landlord, in addition to any other remedies herein provided or provided by law, may, at its option, collect directly from such assignee or subtenant all rents due and becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to landlord from Tenant hereunder, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations hereunder.

If Landlord grants its consent to any sublease or assignment, Tenant shall pay Landlord, as additional rent, in addition to the base rent payable hereunder (a) fifty percent (50%) of rent payable to Tenant by the assignee or sublessee (the "Subrent") if such Subrent exceeds the base rent payable hereunder, it being understood and agreed that Tenant shall pay all costs associated with such sublease or assignment, including, without limitation, leasehold improvement costs, brokerage commissions and its own legal fees and costs; and (b) Landlord's attorneys' fees incurred with respect to such assignment or sublease. In addition, if Tenant has any options to extend or renew the Term, such options shall not be available to any subtenant or assignee directly or indirectly. If Tenant assigns this Lease or sublets all or a portion of the Premises without first obtaining Landlord's consent, as required by this Paragraph 15.A, said assignment or sublease shall be null and void and of no force or effect. Landlord's consent to an assignment, sublease or other transfer of any interest of Tenant in this Lease or in the Premises shall not be deemed to be a consent to any subsequent assignment, transfer, use or occupation.

Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation on the part of Landlord with respect to this lease, and any commissions which may be due and owing as a result of any proposed assignment or subletting, whether or not the Premises are recaptured pursuant hereto and rented by Landlord to the proposed tenant or any other tenant.

B. In addition, but not in limitation of, Landlord's right to approve of any subtenant or assignee, Landlord shall have the option, in its sole discretion, in the event of any proposed subletting or assignment to a non- affiliate of Tenant, to terminate this lease, or in the case of a proposed subletting of less than the entire Premises, to recapture the portion of the Premises to be sublet, as of the date the subletting or assignment is to be effective. The option shall be exercised, if at all, by Landlord giving Tenant written notice thereof within thirty (30) days following Landlord's receipt of Tenant's written notice as required above; provided however that the recapture and termination described in this paragraph shall be void and of no further force and effect if, within ten days after receipt of Landlord's written notice, Tenant withdraws its proposed assignment or sublease. If this lease shall be terminated with respect to the entire Premises pursuant to this subparagraph, the term of this lease shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this lease for the expiration of the term hereof. If Landlord recaptures only a portion of the Premises under this subparagraph, the rent during the unexpired term shall abate proportionately based on the rent contained in this lease as of the date immediately prior to such recapture.

12. Fire and Casualty Damage.

A. Landlord agrees to maintain standard fire and extended coverage insurance covering the Building in an amount not less than 100% (or such greater percentage as may be necessary to comply with the provisions of any co-insurance clauses of the policy) of the "replacement cost" thereof as such term is defined in the Replacement Cost Endorsement to be attached thereto, insuring against the perils of fire, lightning and extended coverage, such coverages and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the state in which the Building is situated for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state. Subject to the provisions of Paragraphs 12C, 12D and 12E, such insurance shall be for the sole benefit of Landlord and under its sole control.

B. If the Building should be damaged or destroyed by fire, tornado or other casualty, Tenant shall give immediate written notice thereof to Landlord.

C. If the Building should be damaged or destroyed by fire, tornado or other casualty, or if it should be so damaged thereby that rebuilding or repairs cannot in Landlord's estimation be completed within two hundred (200) days after the date upon which Landlord is notified by Tenant of such damage, this Lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective upon the date of the occurrence of such damage, unless Landlord and Tenant mutually agree that the Building should be reconstructed upon terms acceptable to both parties, in which case this Lease shall continue and Tenant's Base Rent and Operating Cost obligations shall be payable in accordance Paragraph 12.D. hereof.

D. If the Building should be damaged by any peril covered by the insurance to be provided by Landlord under Paragraph 12A, but only to such extent that rebuilding or repairs can in Landlord's estimation be completed within two hundred (200) days after the date upon which Landlord is notified by Tenant of such damage (except that Landlord may elect not to rebuild if such damage occurs during the last year of the lease term) and if the damage occurs during the last year of the lease term, Landlord may only elect to rebuild if in Landlord's estimation rebuilding or repairs can be completed within ninety (90) days after Tenant's notification to Landlord, this lease shall not terminate, and Landlord shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair the Building to substantially the condition in which they existed prior to such damage, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements which may have been placed in, on or about the Premises by Tenant. If the Premises are untenantable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenantable shall be reduced to such extent as may be fair and reasonable under all of the circumstances. In the event that Landlord should fail to complete such repairs and rebuilding within two hundred (200) days after the date upon which Landlord is notified by Tenant of such damage (unless any such delay is due to changes, deletions or additions in construction requested by Tenant, strikes, lockouts, casualties, acts of God, war, material or labor shortages, governmental regulation or control or other causes beyond the reasonable control of Landlord, in which event such period shall be extended for the amount of time Landlord is so delayed), Tenant may at its option, upon thirty (30) days prior written notice, terminate this lease as Tenant's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.

E. Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or the Building requires that the insurance proceeds be applied to such indebtedness, the Landlord shall have the right to terminate this lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligations hereunder shall cease and terminate as of the date of the casualty.

F. Anything in this lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Building or personal property (building contents) within the Building, by reason of fire or the elements regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees, but only to the extent of the insurance proceeds payable under the policies of insurance covering the Property.

13. **Liability.** Landlord shall not be liable for and Tenant will indemnify and hold Landlord harmless from any loss, liability, claims, suits, costs and expenses, including attorney's fees, arising out of any claim of injury or damage on or about the Premises caused by the negligence or misconduct or breach of this lease by Tenant, its employees, subtenants or invitees or arising out of Tenant's use of the Premises or the Property or other work done by Tenant in or on the Premises or the Property. Landlord shall not be liable to Tenant or Tenant's agents, employees or invitees for any damage to persons or property due to any condition, design, or defect in the Building or its mechanical systems which may exist or occur, or due to any leakage or of damages from gas, oil, water, steam, smoke or electricity or due to any other cause whatsoever, except, subject to Paragraph 12. F hereof., Landlord's negligence, willful misconduct or breach of this Lease, and Tenant assumes all risks of damage to such persons or property, except, subject to Paragraph 12. F hereof, Landlord's negligence, willful misconduct or breach of this Lease. Landlord shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or other matter beyond control of Landlord, or for any injury or damage or inconvenience, which may arise through repair or alteration of any part of the Building, or failure to make repairs, or from any cause whatever except, subject to Paragraph 12.F. hereof, Landlord's willful acts, negligence or breach of this Lease.

14. **Insurance.** Tenant shall maintain throughout the term of this lease a policy of insurance, in form and substance satisfactory to Landlord, at Tenant's sole cost and expense, insuring both Landlord and Tenant against all claims, demands or actions arising out of or in connection with: (i) the Premises; (ii) the condition of the Premises; (iii) Tenant's operations in and maintenance and use of the Premises; and (iv) Tenant's liability assumed under this lease; with a combined single limit of not less than $2,000,000 per occurrence in respect of injury to persons (including death) and in the amount of not less than $500,000 per occurrence in respect of property damage or destruction, including loss of use thereof. Such policy shall be procured by Tenant from responsible insurance companies reasonably satisfactory to Landlord. Evidence of such policy, together with a receipt evidencing payment of the premium, shall be delivered to Landlord prior to the commencement date. Not less than thirty (30) days prior to the expiration date of such policy, a certified copy of a renewal thereof (bearing notations evidencing the payment of the renewal premium) shall be delivered to Landlord. Such policy shall further provide that not less than thirty (30) days' written notice shall be given to Landlord before such policy may be canceled or changed to reduce the insurance coverage provided thereby.

15. **Condemnation.**

A. If the whole or any substantial part of the Building is taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof and the taking would prevent or materially interfere with the use of the Premises or the Building for the purpose of which they are being used, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease effective when the physical taking of the Property shall occur.

B. If part of the Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, and this lease is not terminated as provided in the subparagraph above, this lease shall not terminate but the rent payable hereunder during the unexpired portion of this lease shall be reduced to such extent as may be fair and reasonable under all of the circumstances.

C. In the event of any such taking or private purchase in lieu thereof, Landlord and Tenant shall each be entitled to receive and retain such separate awards and/or portion of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, provided that Tenant shall not be entitled to receive any award for Tenant's loss of its leasehold interest or other property which would have become the property of Landlord upon termination of this Lease; the right to such award being hereby assigned to Landlord.

16. **Holding Over.** Tenant will, at the termination of this lease by lapse of time or otherwise, yield up immediate possession to Landlord. If Tenant retains possession of the lease premises or any part thereof after such termination, then such holding over shall constitute a month to month tenancy, upon the terms and conditions set forth in this Lease; provided, however, that the monthly rental shall, in addition to all

other sums which are to be paid by Tenant hereunder, whether or not as additional rent, be equal to double the rental being paid monthly to Landlord under this Lease immediately prior to such termination. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including the loss of any proposed subsequent tenant for any portion of the leased premises. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as herein set forth; nor shall receipt of any rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

17. **Quiet Enjoyment.** Landlord covenants that it now has, or will acquire before Tenant takes possession of the Premises, good title to the Premises, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due, such mortgage or mortgages as are permitted by the terms of this lease, zoning ordinances and other building and fire ordinances and governmental regulations relating to the use of such property, and easements, restrictions and other conditions of record. In the event this lease is a sublease, then Tenant agrees to take the Premises subject to the provisions of the prior leases. Landlord represents and warrants that it has full right and authority to enter into this lease and that Tenant, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Landlord, subject to the terms and provisions of this lease.

18. **Events of Default.** The following events shall be deemed to be events of default by Tenant under this lease:

    a. Tenant shall fail to pay any installment of the base rent, additional rent, Operating Costs, or any other payment or reimbursement to Landlord required herein when due, and such failure shall continue for a period of five (5) days from the date such payment was due; provided however that the first three (3) times base rent is not received by the fifth day of the month, Landlord agrees to give Tenant notice (which may be telephone notice) thereof, and provided the then-due base rent and Operating Costs are paid within two (2) business days after Tenant is in receipt of such notice, Tenant shall not be in default of this Lease and the late fee described in the paragraph of Paragraph 19 shall be waived.

    b. Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

    c. Tenant shall file a petition under any section or chapter of the federal bankruptcy laws, or under any similar law or statute of the United States or any State thereof, whether now or hereafter in effect; or an order for relief shall be entered against Tenant in any such bankruptcy or insolvency proceedings filed against Tenant thereunder or Tenant shall be adjudged bankrupt or insolvent in proceedings filed against Tenant thereunder.

    d. A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant.

    e. Tenant shall generally not pay its debts as such debts become due.

    f. Tenant shall vacate all or a substantial portion of the Premises, whether or not Tenant is in default of the payments due under this lease.

    g. Tenant shall fail to discharge any lien placed upon the Premises in violation of Paragraph 23 hereof within twenty (20) days after such lien or encumbrance is filed against the Premises.

    h. Tenant shall fail to comply with any term, provision or covenant of this lease (other than any other provision of this Paragraph 18), and shall not cure such failure within twenty (20) days after written notice thereof to Tenant; provided however that if the nature of such failure is such that twenty (20) days is not sufficient to cure such failure, then Tenant shall not be deemed to be in default so long as it commences such cure within the twenty-day period and thereafter pursues such cure to completion, which completion shall not exceed ninety (90) days except in the case of construction in which case, if Tenant reasonably estimates the cure period will exceed ninety (90) days, Landlord and Tenant shall, at the commencement of the cure, in good faith, negotiate an extension of said ninety-day period.

    i. Tenant shall violate the provisions of Paragraph 28 hereof, and shall not cure such puncture, penetration or other violation of Paragraph 28 hereof failure within twenty (20) days after written notice thereof to Tenant; provided however that if the nature of such failure is such that twenty (20) days is not sufficient to cure such failure, then Tenant shall not be deemed to be in default so long as it commences such cure within the twenty- day period and thereafter pursues such cure to completion, which completion shall not exceed ninety (90) days.

    j. Tenant shall default under any one or more of (i) that certain Lease Agreement between Landlord and Tenant dated February 11, 1992, as amended, for premises leased by Tenant pursuant thereto located at 3955 Annapolis Lane, Plymouth, Minnesota (the "3955 Lease"); or (ii) that certain Supplemental Lease dated March 7, 1996, as amended, for premises at 3750 Annapolis Lane, Plymouth, Minnesota (to the extent not terminated by the mutual agreement of Landlord and Tenant).

19. **Remedies.** Upon the occurrence of any of such events of default described in Paragraph 18 hereof, Landlord shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever.

    a. Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease; and/or Landlord may, at its election, terminate the 3955 Lease and/or the Supplemental Lease, or terminate Tenant's right to possession of the spaces(s) demised by the 3955 Lease and/or the Supplemental Lease only, without terminating the 3955 Lease and/or the Supplemental Lease and exercise all rights and remedies of Landlord under the 3955 Lease and/or the Supplemental Lease;

    b. Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of this Lease, Tenant shall surrender possession and vacate the Premises immediately and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event with or without process of law and to repossess Landlord of the Premises as of Landlord's former estate and to expel or remove Tenant and any others who may be occupying or within the Premises and to alter all locks and other security devices at the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting

therefrom, Tenant hereby waiving any right to claim damage for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law;

c. Upon any termination of this lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including any amounts treated as additional rent hereunder, and other sums due and payable by Tenant on the date of termination, plus the sum of (i) an amount equal to the then present value of the rent, including any amounts treated as additional rent hereunder, and other sums provided herein to be paid by Tenant for the residue of the term hereof, less the fair rental value of the Premises for such residue (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses hereinafter described in subparagraph (d) relating to recovery of the Premises, preparation for reletting and for reletting itself) and (ii) the cost of performing any other covenants which would have otherwise been performed by Tenant;

d. (i) Upon any termination of Tenant's right to possession only without termination of the lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided in subparagraph (b) above, without such entry and possession terminating the lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as additional rent, hereunder for the full term. In any such case Tenant shall pay forthwith to Landlord, if Landlord so elects, a sum equal to the entire amount of the rent, including any amounts treated as additional rent hereunder, for the residue of the stated term hereof plus any other sums provided herein to be paid by Tenant for the remainder of the lease term;

(ii) Landlord may, but need not relet the Premises or any part thereof for such rent and upon such terms as Landlord in its sole discretion shall determine (including the right to relet the Premises as part of a larger area and the right to change the character or use made of the Premises) and Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting. In any such case, Landlord may make repairs, alterations and additions in or to the Premises, and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall, upon demand, pay the cost thereof, together with landlord' expenses of reletting including, without limitation, any broker's commission incurred by landlord. If the consideration collected by Landlord upon any such reletting plus any sums previously collected from Tenant are not sufficient to pay the full amount of all rent, including any amounts treated as additional rent hereunder and other sums reserved in this lease for the remaining term hereof, together with the costs of repairs, alterations, additions, redecorating, and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including attorney's fees and broker's commissions), Tenant shall pay to Landlord the amount of such deficiency upon demand and Tenant agrees that Landlord may file suit to recover any sums falling due under this subparagraph from time to time;

e. Landlord may, at Landlord's option, enter into and upon the Premises, with or without process of law, if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible hereunder and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage resulting therefrom and Tenant agrees to reimburse Landlord, on demand, as additional rent, for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this lease;

f. Any and all property which may be removed from the Premises by Landlord pursuant to the authority of the lease or of law, to which Tenant is or may be entitled, may be handled, removed and stored, as the case may be, by or at the direction of Landlord at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof; provided Landlord shall give Tenant five (5) days prior written notice of such removal. Tenant shall pay to landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken by Tenant from storage within thirty (30) days after removal from the Premises shall, at Landlord's option, be deemed conveyed by Tenant to Landlord under this lease as by a bill of sale without further payment or credit by Landlord to Tenant.

Subject to the provisions of Paragraph 18(a), in the event Tenant fails to pay any installment of rent, including any amount treated as additional rent hereunder, or other sums hereunder as and when such installment or other charge is due, Tenant shall pay to Landlord on demand a late charge in an amount equal to five percent (5%) of such installment or other charge overdue in any month and five percent (5%) each month thereafter until paid in full to help defray the additional cost to Landlord for processing such late payments, and such late charge shall be additional rent hereunder and the failure to pay such late charge within ten (10) days after demand therefor shall be an additional event of default hereunder. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by the Landlord or its agents during the term hereby granted shall be deemed a termination of this lease or an acceptance of the surrender of the Premises, and no agreement to terminate this lease or accept a surrender of said Premises shall be valid unless in writing signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Landlord's acceptance of the payment of rental or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to enforce any such remedies with respect to such default or any subsequent default. If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney concerning or to enforce or defend any of Landlord's rights or remedies hereunder, Tenant agrees to pay any reasonable attorney's fees so incurred.

20. **Landlord's Lien.** Intentionally deleted.

21. **Mortgages.** Tenant accepts this lease subject and subordinate to any mortgage(s) now or at any time hereafter constituting a lien or charge upon the Property or the Premises, provided, however, that if the holder of any such mortgage elects to have Tenant's interest in this lease

superior to any such instrument, then by notice to Tenant from such holder, this lease shall be deemed superior to such lien, whether this lease was executed before or after said mortgage. Tenant shall at any time hereafter on demand execute any instruments, releases or other documents which may be required by any mortgagee for the purpose of subjecting and subordinating this lease to the lien of any such mortgage, provided if such mortgagee provides in said document that, if it succeeds to the interest of Landlord hereunder, and Tenant is not then in default, Tenant's possession of the Premises shall not be disturbed.

22. **Landlord's Default.** In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord and/or upon rent due Landlord), but prior to any such action Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days in which to cure any such default. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter.

23. **Mechanic's Liens and Personal Property Taxes.**

    A. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Building or the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and that it will save and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Building or the Premises or under the terms of this lease. Tenant agrees to give Landlord immediate written notice of the placing of any lien or encumbrance against the Building or the Premises.

    B. Tenant shall be liable for all taxes levied or assessed against personal property, furniture or fixtures placed by Tenant in the Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property, furniture or fixtures placed by Tenant in the Premises, and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes.

24. **Notices.** Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivery of any notice or the making of any payment by Tenant to Landlord shall be deemed to be complied with when and if the following steps are taken:

    a. All rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address for Landlord herein below set forth or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay rent and any other amounts to landlord under the terms of this lease shall not be deemed satisfied until such rent and other amounts have been actually received by Landlord.

    b. All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address herein below set forth, or at such other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance herewith.

    c. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not (i) ten (10) days after deposit in the United States Mail, postage prepaid, Certified or Registered Mail, addressed to the parties hereto at the respective addresses set out below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith; (ii) when personally delivered; or (iii) one (1) business day after deposit, fees prepaid, with a national overnight air carrier (it being understood and agreed that, for the purposes of this Lease, a "business day" shall be a day which is not a Saturday, a Sunday or a legal holiday of the State of Minnesota):

LANDLORD:	**TENANT:**
St. Paul Properties, Inc.	Protein Design Labs, Inc.
385 Washington Street	38401 Campus Drive
St. Paul, Minnesota 55102	Fremont, California 94555
Attention: Vice-President, Asset Management	Attention: General Counsel
With a copy to:	With a copy to:
United Properties, LLC	Vice President, Manufacturing
3500 West 80th Street, Suite 200	3955 Annapolis Lane
Bloomington, Minnesota 55431	Plymouth, Minnesota 55447
Attention: Vice-President, Property Management	

If and when included within the term "Landlord," as used in this instrument, there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Landlord; if and when included within the term "Tenant," as used in this instrument, there are more than

one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address within the continental United States for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant," respectively, shall be bound by notices given in accordance with the provisions of this paragraph to the same effect as if each had received such notice.

25. Miscellaneous.

A. Words of any gender used in this lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

B. The terms, provisions and covenants and conditions contained in this lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided. Landlord shall have the right to assign any of its rights and obligations under this lease. The term "Landlord" shall mean only the owner, at any time of the Premises, and in the event of the transfer by such owner of its interest in the Premises, Landlord's grantee or Landlord's successor shall upon such transfer, become "Landlord" hereunder, thereby freeing and relieving the grantor or assignor of all covenants and obligations of "Landlord" hereunder; but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership, provided, however, that no successor Landlord shall be responsible for the return of any security deposit provided for pursuant to Paragraph 2B unless such successor receives the deposit. Tenant agrees to furnish promptly upon demand, a corporate resolution, proof of due authorization by partners, or other appropriate documentation evidencing the due authorization of Tenant to enter into this lease. Nothing herein contained shall give any other tenant in the Building any enforceable rights either against Landlord or Tenant as a result of the covenants and obligations of either party set forth herein.

C. The captions inserted in this lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this lease, or any provision hereof, or in any way affect the interpretation of this lease.

D. Tenant agrees from time to time within ten (10) days after request of Landlord, to deliver to landlord, or Landlord's designee an estoppel certificate in a form designated by Landlord. It is understood and agreed that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this lease.

E. This lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

F. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the term of this lease shall survive the expiration or earlier termination of the term hereof, including without limitation, all payment obligations with respect to Operating Costs and all obligations concerning the condition of the Premises. Upon the expiration or earlier termination of the term hereof, Tenant shall pay to Landlord the amount as estimated by landlord, necessary (i) to repair and restore the Premises as provided herein; and (ii) to discharge Tenant's obligation for Operating Costs or other amounts due Landlord. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant, with Tenant being liable for any additional costs upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied. Any security deposit held by Landlord shall be credited against the amount payable by Tenant under this subparagraph.

G. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several.

H. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction or that no broker, agent or other person brought about this transaction, other than United Properties LLC, acting as Landlord's broker, whose fees shall be paid by Landlord, and Tenant agrees to indemnify and hold harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

I. If any clause or provision of this lease is illegal, invalid or unenforceable under present or future laws effective during the term of this lease, then and in that event, it is the intention of the parties hereto that the remainder of this lease shall not be affected thereby, and it is also the intention of the parties to this lease that in lieu of each clause or provision of this lease that is illegal, invalid or unenforceable, there be added as a part of this lease contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

J. Because the Premises are on the open market and are presently being shown, this lease shall be treated as an offer and shall not be valid or binding unless and until accepted by Landlord in writing.

26. Hazardous Waste

A. The term "Hazardous Substances," as used in this lease shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any federal, state or local law or ordinance relating to pollution or protection of the environment. Tenant hereby agrees that (i) no activity will be conducted on the Premises that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of Tenant's activities (the "Permitted Activities") provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Landlord: (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of Tenant's business (the "Permitted Material") provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws and approved in advance in writing by Landlord; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground tanks of any type; (v) Tenant will not cause any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; (vi) Tenant will not permit any Hazardous Substances to be brought onto the Premises, except for the Permitted Materials described above, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws. If, at any time during or after the term of the lease, the Premises is found to be so contaminated or subject to said conditions, Tenant agrees to indemnify and hold Landlord harmless from all claims, demands, actions, liabilities, costs,

expenses, including reasonable attorneys' fees, damages and obligations of any nature arising from or as a result of the use of the premises by Tenant. The foregoing indemnification shall survive the termination or expiration of this Lease.

27. **Right of Termination.** Tenant shall have a one-time option to terminate this Lease effective on the last day of the forty-eighth full calendar month of the lease term (the "Termination Date") by giving written notice thereof (the "Termination Notice") to Landlord not later than the last day of the thirty-ninth full calendar month of the Term; provided however, the following shall be conditions precedent to the exercise of such option: (a) Tenant shall not be in default under any of the terms and conditions of this Lease as of the date of the Termination Notice or as of the Termination Date; and (b) simultaneously with its delivery of the Termination Notice, Tenant delivers to Landlord a termination fee in the amount of the sum of (i) $66,000.00; plus (ii) the Unamortized Transaction Costs (as hereinafter defined), payable by wire transfer or by cashier's check payable to Landlord's order; and (c) Tenant delivers to Landlord evidence reasonably satisfactory to Landlord that the reason for Tenant's termination is that Tenant then owns a building not located in Plymouth Business Center and intends to move to such building Tenant's operations conducted in the Premises. If Tenant satisfies the foregoing conditions, base rent, additional rent and Operating Costs shall be paid through and apportioned as of the Termination Date and neither Landlord nor Tenant shall have any rights, estates, liabilities or obligations accruing under the Lease after the Termination Date, except such rights and obligations which, by the terms of this Lease, expressly survive the expiration or termination of this Lease. The right to terminate granted herein shall be personal to Tenant and shall not accrue to any assignee, sublessee or successor to the interest of Tenant under the Lease. For the purposes of this Lease, Unamortized Transaction Costs shall mean leasing commissions (together with interest thereon at the rate of twelve percent (12%) per annum) and legal fees incurred by Landlord in connection with this Lease, amortized on a straight-line basis over eighty-four (84) months.

28. **Roof Penetrations**

    a. Without limiting the other provisions of this Lease, Tenant, at any time, may request from Landlord permission to puncture or penetrate the roof of the Building or make an alteration, improvement or addition to the roof of the Building including, without limitation, affixing any object of any type to the roof of the Building (any one or more of such actions hereinafter a "Roof Activity"), it being understood and agreed that Tenant shall not, without obtaining Landlord's prior written consent, make or suffer any Roof Activity. Landlord may withhold its consent to the requested Roof Activity if Landlord determines, in Landlord's sole and absolute discretion, that the Roof Activity will have an adverse impact on the Building, including, without limitation, the roof of the Building or any Building System. Notwithstanding the foregoing, Landlord shall not withhold its consent if, together with its request to perform a Roof Activity, or after Landlord's refusal to consent to a Roof Activity, Tenant delivers to Landlord the plans for such Roof Activity, together with a certification from a structural engineer licensed in the State of Minnesota obtained at Tenant's sole cost and expense (a) stating that such engineer has reviewed the as-built plans for the Building and the plans for the Roof Activity and that such Roof Activity shall not have any impact on the structure of the Building, including, without limitation, the roof, exterior walls or foundation; and (b) attaching a copy of such engineer's policy of professional liability insurance. Tenant's violation of the provisions of this Paragraph 28 shall constitute an event of default under this Lease.

    b. Subject to the provisions of subparagraph (a) of this Paragraph 28, Tenant may, at Tenant's option, and at Tenant's sole cost and expense, either:

        i. remove the HVAC equipment located on the roof of the Building, as of the date of this Lease (the "Existing HVAC Equipment"), using Landlord's roofing contractor for all patching and/or repair work, from the roof of the Building and replace it with an HVAC unit or units selected and installed by Tenant (the "Tenant HVAC Equipment"), using Landlord's roofing contractor. In such case, as a part of Tenant's obligations under Paragraph 7 hereof, on or prior to the Expiration Date or as of the earlier date of termination of this Lease, at Landlord's option, Tenant shall, at Tenant's sole cost and expense, remove Tenant's HVAC Equipment from the roof, using Landlord's roofing contractor for all patching and/or repair work; or

        ii. leave the Existing HVAC Equipment on the roof of the Building and, in addition, place Tenant HVAC Equipment on the roof of the Building, using landlord's roofing contractor for all patching and/or repair work, which selection and installation shall be subject to the provisions of this Paragraph 28, and as of the Expiration Date or as of the earlier date of termination of this Lease, as to the Tenant HVAC Equipment, the parties shall proceed in accordance with subparagraph (i) above. Other than as set forth in Paragraph 6.E. hereof, and subparagraphs (c) and (d) of this Paragraph 28, Tenant shall have no responsibility for the Existing HVAC Equipment as of the Expiration Date, or as of the earlier date of termination of this Lease.

    c. Ownership of the Tenant HVAC Equipment shall pass to Landlord as of the Expiration Date or the earlier termination of the term of this Lease as if by bill of sale, in the then "as-is" condition of the Tenant HVAC Equipment, and without the need for further written instruments; provided however, that Tenant hereby warrants that, as of the date of such passage of ownership, there shall be no liens or encumbrances against the Tenant HVAC Equipment. In addition, Tenant shall not have created or suffered to exist any lien or encumbrance against the Existing HVAC Equipment.

    d. Notwithstanding any other provision of this Lease to the contrary, including, without limitation, the provisions of Paragraph 13 hereof, Tenant hereby agrees to defend and does hereby indemnify and hold Landlord harmless from and against any and all claims, proceedings, actions, judgments, costs and expenses, including attorneys' fees through all appellate levels, arising from the removal of the Existing HVAC Equipment above, and the placement, repair, maintenance, operation, replacement or removal of the Tenant HVAC Equipment, it being understood and agreed that the defense, indemnification and hold harmless obligations contemplated by this subparagraph (d) include, without limitation, claims, actions, judgments, costs and expenses, including attorneys' fees through all appellate levels incurred by Landlord as a result of claims of personal or bodily injury or property damage made by third parties. The indemnification obligations under this subparagraph (d) apply to Tenant's decision to proceed in accordance with clause (2) of Paragraph 6.E. hereof.

    e. Tenant understands and agrees that the placement of the Tenant HVAC Equipment on the roof of the Building contemplated in this Paragraph 28 or any Roof Activity must be in accordance with all applicable laws, codes and regulations, including, without limitation, laws, codes and regulations of the City of Plymouth. Tenant further

understands and agrees that Landlord makes no warranty or representation that the City of Plymouth will provide the necessary consents for the placement of the Tenant HVAC Equipment or any Roof Activity, the risk of obtaining such consents being borne entirely by Tenant. Tenant finally understands and agrees that Tenant's failure to obtain the consent of the City of Plymouth to the placement of any or all of Tenant's HVAC Equipment on the roof or any Roof Activity shall in no way constitute a constructive eviction, work an abatement of rent or otherwise modify Tenant's obligations under this Lease, including, without limitation, the obligation to pay base rent and Operating Costs.

f. All of Tenant's obligations contained in this Paragraph 28 shall survive the expiration or earlier termination of this Lease.

29. **Chiller.** Landlord and Tenant acknowledge and agree that Tenant intends to place a chiller at the rear of the Premises for Tenant's sole use. Landlord and Tenant further agree that Tenant shall provide plans for the chiller and the placement thereof to Landlord not less than thirty (30) days prior to the date Tenant intends to install the chiller, which plans shall be subject to Landlord's reasonable approval. Landlord may withhold its approval if, in Landlord's sole determination, the placement of the chiller or other attributes of the chiller, will adversely affect Landlord's property or the use and occupation of another Tenant of the Building. Landlord makes no representation or warranty that the City of Plymouth will give its consent to the placement of the chiller, and Tenant agrees that it shall bear full responsibility for obtaining all necessary permits, licenses and approvals from the City of Plymouth for the installation, operation, repair and maintenance of the chiller. The chiller shall be considered an improvement pursuant to this Lease and shall be removed or left at the end of the term of this Lease in accordance with Paragraph 7 hereof. All costs of the chiller, including, without limitation, all costs of obtaining the consent of the City of Plymouth to install the chiller, all costs of the installation, operation, maintenance and repair of the chiller and the removal thereof shall be borne in their entirety by Tenant and no expense arising from the chiller shall be considered a part of Operating Costs hereunder.

30. **Animals.** Landlord and Tenant agree that Landlord shall not lease the space in the Building to any person or entity who intends to keep or have animals on its premises, and shall provide in the rules and regulations applicable to such premises that the keeping of or having animals on such tenant's premises will be a violation of such tenant's lease, allowing Landlord to terminate such lease. Nothing in the preceding sentence shall be deemed to preclude Landlord or the tenant of the adjacent space from allowing employees, agents, contractors or invitees of the tenant of the adjacent premises to bring into the adjacent premises any seeing-eye or hearing-ear dogs or other animals required by such employees, agents, contractors or invitees to perform their normal life activities. Should Landlord breach the obligations contained in this Paragraph 30, Tenant's sole remedy shall be to seek equitable relief, it being understood and agreed that in no case shall Landlord be liable for damages of any kind or nature or for any costs or fees, including attorneys' fees, incurred by Tenant in pursuing its remedies under this Paragraph 30.

31. **Renewal of Lease.** Landlord hereby grants to Tenant a one-time option to renew the lease as to the Premises upon the terms and conditions of this Paragraph 31 if:

(a) Tenant is not in default under this lease beyond any time to cure at the time such option is exercised or at the commencement of the renewal term; and

(b) Tenant gives Landlord written notice of the exercise of the renewal of this Lease nine (9) months prior to the end of the Term (the "Renewal Notice of Exercise"), time being of the essence. Tenant's failure to notify Landlord of its intent to exercise the option to renew the Term granted herein on or before the dates specified in this subparagraph (b) for such renewal shall be deemed a waiver of Tenant's right to exercise the option to renew granted herein.

If Tenant elects to renew this Lease under this Paragraph 31, the following terms and conditions shall apply:

(w) the renewal term in question shall commence upon the expiration of the term and continue thereafter for a period of five (5) years;

(x) base rent for the Premises for the renewal term shall be Market Rent (as defined in Paragraph 32 of this lease);

(y) Paragraph 6.E.(z) of this lease shall be amended to require the reports described therein on November 30, 2010 and November 30, 2013; and

(z) all of the other terms and conditions contained in this lease, as it may have been amended from time to time, shall be as set out in this lease, it being understood that there shall be no rights of renewal or extension except as provided in this Paragraph 31, and, upon the exercise of the right of renewal granted by this Paragraph 31, this Paragraph 31 shall be of no further force or effect and Tenant shall have no right to further renew or extend the term at the expiration of the renewal term.

Within fifteen (15) days after request thereof from Landlord, Tenant shall execute and deliver to Landlord those instruments which Landlord may request to evidence the renewal described in this Paragraph 31. The rights of Tenant under this Paragraph 31 shall not be severed from this Lease or separately sold, assigned, or otherwise transferred, and shall expire on the expiration or earlier termination of this Lease. Notwithstanding the foregoing, the renewal option contemplated by this Paragraph 31 shall automatically terminate and become null and void and of no further force and effect upon the earliest to occur of (i) the expiration or termination of this Lease, (ii) the termination of Tenant's right to possession of the Premises, or (iii) the failure of Tenant to timely or properly exercise the rights granted by this Paragraph 31. The right contemplated by this Paragraph shall not survive the expiration or termination of this Lease, and shall not be available to any assignee, sublessee, or successor to Tenant's interests hereunder.

32. **Market Rent.** "Market Rent" means the amount of base rent, which may or may not include concessions, improvements and other matters (exclusive of Operating Costs) which Landlord would receive by then renting similar space (including similar square footage) for premises in the project in which the Building is located. Within forty-five (45) days after Tenant exercises its right to renew the term pursuant to Paragraph 31, Landlord shall give Tenant notice of Market Rent for the renewal term (the "Market Rent Notice"). If Tenant does not agree with Landlord's determination of Market Rent as set forth in the Market Rent Notice, Tenant shall so notify Landlord in writing within ten (10) days after Tenant's receipt of the Market Rent Notice ("Tenant's Notice"). Landlord and Tenant shall, for ten (10) days after Landlord's receipt of Tenant's Notice, negotiate in good faith to come to an agreement as to Market Rent for the renewal term. If Landlord and Tenant are unable to agree upon Market Rent within said ten day period, then, notwithstanding the provisions of Paragraph 31, Tenant shall have the right to rescind the Renewal Notice of Exercise by written notice (the "Rescission Notice") to Landlord given not later than twenty (20) days after the date of Tenant's Notice, it being understood and agreed that if the Rescission Notice is not given within such time period, Tenant shall be deemed to have waived its right to rescind the Renewal Notice of Exercise. In such case, to the extent that the Renewal Notice of Exercise has been effectively exercised by Tenant pursuant to Paragraph 31, Landlord and Tenant shall execute and deliver an

amendment to this Lease which amendment shall be executed and delivered within ten (10) days following the determination of the Market Rent. Tenant's failure to give Tenant's Notice within the time period provided above shall be deemed an acceptance of Landlord's determination of Market Rent, the term shall be deemed renewed pursuant to the Renewal Notice of Exercise, and base rent for the renewal term shall be as set forth in the Market Rent Notice. Notwithstanding anything in this Paragraph 32 to the contrary, in no event shall Market Rent be less than the amount per annum payable during the last month of the term ending February 28, 2009.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of May 31, 2001

LANDLORD:

ST. PAUL PROPERTIES, INC.

By: ___________________________

Its: _________________________

TENANT:

PROTEIN DESIGN LABS, INC.

By: ___________________________

Its: _________________________

EXHIBIT A-1

Description of Premises

3850 Annapolis Lane North, Plymouth, MN

Lot 1, Block, Plymouth Business Center

PID#: 15-118-22-34-0003

Legal to Govern

EXHIBIT B

WORK LETTER AGREEMENT

[Tenant Performs Work]

This Work Letter Agreement ("Work Letter") is dated as of May 31, 2001, and forms a part of that certain Lease Agreement (the "Lease") dated as of May 31, 2001, between PROTEIN DESIGN LABS, INC., a Delaware corporation ("Tenant") and ST. PAUL PROPERTIES, INC., a Delaware corporation ("Landlord") relating to certain premises ("Premises") as defined in the Lease. Capitalized terms used herein, unless otherwise defined in this Work Letter, shall have the respective meanings ascribed to them in the Lease.

For and in consideration of the agreement to lease the Premises and the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. Work. Tenant, at its sole cost and expense, shall perform, or cause to be performed, the work (the "Work") in the Premises provided for in the Approved Plans (as defined in Paragraph 2 hereof).

2. Pre-Construction Activities.

(a) On or before July 1, 2001, as to the demolition of the improvements existing in the Premises as of the date of this Lease, and as of August 1, 2001, as to the construction of the Premises in accordance with this Work Letter, Tenant shall submit the following information and items to Landlord for Landlord's review and approval:

(i) A construction schedule containing the major components of the Work, including the scheduled commencement date of construction of the Work and the estimated date of completion of construction.

(ii) Evidence satisfactory to Landlord in all respects of Tenant's ability to pay the cost of the Work as and when payments become due, it being understood and agreed that, so long as Tenant engages Westin Construction, Inc. ("Westin") as its general contractor, and The DLR Group ("DLR") as its architect, Landlord shall not require payment and performance bonds for all or any portion of the Work; provided however, that if Tenant engages a general contractor other than Westin or an architect other than DLR, Landlord reserves the right to require that Tenant or the general contractor provide payment and performance bonds, with dual obligee riders, for all or a portion of the Work.

(iii) A sworn total project cost statement prepared by Tenant and signed and sworn to as accurate by Tenant and Westin or other general contractor approved by Landlord ("General Contractor") (as to the cost of the Work), setting forth an itemization of estimated construction costs, including fees for permits and architectural and engineering fees, disclosing the various subcontracts and contracts for materials to be entered into by General Contractor (collectively, the "Subcontracts") and setting forth the names of all architects, including DLR or other architect reasonably approved by Landlord, engineers, consultants, designers, subcontractors and material suppliers of all tiers (who, collectively with General Contractor, are referred to herein as "Tenant's Contractors"), including subcontractors and material suppliers, if any, with whom General Contractor has contracted to date, their addresses, work and materials to be furnished, amounts of the Subcontracts, the amounts, if any, paid to date and the balance due under each Subcontract and the Construction Contract.

(iv) The construction contract (the "Construction Contract") entered into by Tenant and the General Contractor for the Work.

(v) Delivery of the Construction Deposit (as more fully described and defined in Paragraph 8(a) hereof).

(vi) Certified copies of insurance policies or certificates of insurance as hereinafter described. Tenant shall not permit Tenant's Contractors to commence work until the required insurance has been obtained and certified copies of policies or certificates have been delivered to Landlord.

(vii) At Landlord's election, but subject to subparagraph (ii) above, payment and performance bonds issued by an insurance company with an A.M. Best rating of at least A-X and qualified to conduct business in the State of Minnesota, for all of Tenant's Contractors naming Landlord (or an agent, designee or representative appointed by Landlord's written notice to Tenant given prior to Tenant's procurement of paid bonds) as a dual obligee.

(viii) The Plans (as hereinafter defined) for the Work, which Plans shall be subject to Landlord's approval in accordance with Paragraph 2(b) below.

Tenant will update such information and items by notice to Landlord of any changes, which changes shall be subject to the provisions of this Work Letter.

(b) As used herein the term "Approved Plans" shall mean the Plans (as hereinafter defined), as and when approved in writing by Landlord. As used herein, the term "Plans" shall mean the full and detailed architectural and engineering plans and specifications covering the Work (including, without limitation, architectural, mechanical and electrical working drawings for the Work), which Plans shall include "tie-ins" to existing utility service at the Building, it being understood and agreed that Landlord shall not be obligated to provide additional utility capacity or tie-ins at other than the location of such utility service in the Building. The Plans shall be subject to Landlord's approval and the approval of all local governmental authorities requiring approval of the work and/or the Plans. Landlord shall give its approval or disapproval (giving specific reasons for disapproval if the Plans are disapproved) of the Plans within ten (10) business days after their delivery to Landlord. Landlord agrees not to unreasonably withhold its approval of said Plans; provided, however, that Landlord shall not be deemed to have acted unreasonably if it withholds its approval of the Plans because, in Landlord's reasonable opinion: the Work as shown in the Plans is likely to adversely affect Building Systems, the structure of the Building or the safety of the Building and/or its occupants; the Work as shown on the Plans might impair Landlord's ability to furnish services to Tenant or other tenants; the Work would increase the cost of operating the Building; the Work would violate any governmental laws, rules or ordinances (or interpretations thereof); the Work contains or uses hazardous or toxic materials or substances that are not otherwise permitted under applicable law, rule or regulation, assuming Tenant's strict compliance with all such laws, rules and regulations; the Work would adversely affect the appearance of the Building; the Work would adversely affect another tenant's premises; or the Work is prohibited by any mortgage or trust deed encumbering the Building. The foregoing reasons, however, shall not be exclusive of the reasons for which Landlord may withhold consent, whether or not such other reasons are similar or dissimilar to the foregoing. Notwithstanding the foregoing, when approved, the Approved Plans shall be considered binding on both Landlord and Tenant. If Landlord notifies Tenant that changes are required to the final Plans submitted by Tenant, Tenant shall, within three (3) business days thereafter, submit to Landlord, for its approval, the Plans amended in accordance with the changes so required. The Plans shall also be revised, and the Work shall be changed, all at Tenant's cost and expense, to incorporate any work required in the Premises by any local governmental field inspector. Landlord's approval of the Plans shall in no way be deemed to be (i) an acceptance or approval of any element therein contained which is in violation of any applicable laws, ordinances, regulations or other governmental requirements, or (ii) an assurance that work done pursuant to the Approved Plans will comply with all applicable laws (or with the interpretations thereof) or satisfy Tenant's objectives and needs.

(c) No Work shall be undertaken or commenced by Tenant in the Premises as to the demolition or construction portions of the Work until (i) Tenant has delivered, and Landlord has approved, all items shown in Paragraph 2(a) above, (ii) all necessary building permits and other consents and approvals have been applied for and obtained by Tenant, and (iii) Tenant has complied with Landlord's requirements pursuant to subparagraph 2(a)(ii) above. Nothing in this subparagraph (c) shall be deemed to preclude Tenant from commencing the demolition portion of the Work at such time as, as to the demolition portion of the Work, Tenant has delivered and Landlord has approved all of the items set forth in Paragraph 2(a) above.

3. Delays. In the event Tenant fails to deliver in sufficient and accurate detail the information required under Paragraph 2 above on or before the respective dates specified in said Paragraph 2, or in the event Tenant, for any reason, fails to complete the Work on or before the Commencement Date, Tenant shall

be responsible for Rent and all other obligations under the Lease from and after the Commencement Date regardless of the degree of completion of the Work on such date, and no such delay in completion of the Work shall relieve Tenant of any of its obligations under the Lease.

4. Supervisory Fees. Tenant shall pay Landlord a supervisory fee for actual expenses incurred in an amount not to exceed $2,500.00 to defray Landlord's administrative and overhead expense incurred to review the Plans and coordinate with Tenant's on-site project manager the staging and progress of the Work. Landlord shall invoice Tenant for and provide reasonable documentation of such expenses at the end of the month in which such expenses are incurred and Tenant shall pay the same within ten (10) days after the receipt of Landlord's invoice therefor.

5. Change Orders. All changes to the Approved Plans requested by Tenant must be approved by Landlord in advance of the implementation of such changes as part of the Work. All delays caused by Tenant- initiated change orders, including, without limitation, any stoppage of work during the change order review process, are solely the responsibility of Tenant. All increases in the cost of the Work resulting from such change orders shall be borne by Tenant. Change orders which materially modify the scope of the Work will increase the supervisory fee based on the time and effort required of Landlord's construction project manager identified in Paragraph 9 hereof.

6. Standards And Conditions of Tenant's Performance. All work done in or upon the Premises by Tenant shall be done according to the standards stated in this Paragraph 6, except as the same may be modified in the Approved Plans approved by or on behalf of Landlord and Tenant.

(a) Tenant's Approved Plans and all design and construction of the Work shall comply with all applicable statutes, ordinances, regulations, laws, codes and industry standards, including, but not limited to, requirements of Landlord's fire insurance underwriters. Within the time period provided in Paragraph 2(b) hereof for the review of the Plans, Landlord shall provide to Tenant any requirements from such fire insurance underwriters.

(b) Tenant shall, at its own cost and expense, obtain all required building permits, occupancy permits and other consents and approvals which may be required by the City of Plymouth, the State of Minnesota, the United States of America or any other governmental entity or agency with jurisdiction. Tenant's failure to obtain such permits shall not cause a delay in the commencement of the Term or the obligation to pay Rent or any other obligations under the Lease.

(c) Tenant's Contractors shall be licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's supervisory and management agents and personnel. All work shall be coordinated with any other construction or other work in the Building in order not to adversely affect construction work being performed by or for Landlord or its tenants. Subject to the requirements of this Work Letter, both parties agree to cooperate in connection with all of their respective obligations contemplated by this Work Letter.

(d) To the extent Tenant does not perform or does not cause to be performed any work which pertains to patching of the Work and other work in the Building within five (5) days after notice from Landlord, which notice need not be in writing, but shall be confirmed in writing by Landlord within one (1) business day after oral notice is given, except in the event of an emergency when no notice shall be required, Landlord shall have the right, but not the obligation, to perform, on behalf of and for the account of Tenant, subject to reimbursement by Tenant, the work which pertains to patching of the Work and other work in the Building.

(e) Tenant shall use only new, first-class materials in the Work, except where explicitly shown in the Approved Plans. All Work shall be done in a good and workmanlike manner. With respect to that portion of the Work which is or will become a fixture, Tenant shall obtain contractors' warranties in favor of both Landlord and Tenant of at least one (1) year's duration and manufacturer's warranties in favor of both Landlord and Tenant for the duration customarily granted by the manufacturer from the completion of that portion of the Work against defects in workmanship and materials.

(f) Tenant and Tenant's Contractors shall make all efforts and take all steps appropriate to assure that all construction activities undertaken comport with the reasonable expectations of all tenants and other occupants of a fully-occupied (or substantially fully occupied) building of the same class as the Building and do not unreasonably interfere with the operation of the Building or with other tenants and occupants of the Building. In any event, Tenant shall comply with all reasonable rules and regulations existing from time to time at the Building. Tenant and Tenant's Contractors shall take all precautionary steps to minimize dust, noise, odors, and construction traffic, and to protect their facilities and the facilities of others affected by the Work and to properly police same. Construction equipment and materials are to be kept within the Premises and delivery and loading of equipment and materials shall be done at such locations and at such time as Landlord shall direct so as not to burden the construction or operation of the Building. If and as required by Landlord, the Premises shall be sealed off from the balance of the Building so as to minimize the disbursement of dirt, debris and noise.

(g) Within five (5) days after notice from Landlord, which notice need not be in writing, but shall be confirmed in writing by Landlord within one (1) business day after oral notice is given, except in the event of an emergency when no notice shall be required, Landlord shall have the right to order Tenant or any of Tenant's Contractors who violate the requirements imposed on Tenant or Tenant's Contractors in performing work to cease work and remove its equipment and employees from the Building. No such action by Landlord shall delay the commencement of the Lease or the obligation to pay Rent or any other obligations therein set forth.

(h) Utility costs or charges for any service to the Premises shall be the responsibility of Tenant from the date Tenant is obligated to commence or commences the Work and shall be paid for by Tenant at Landlord's standard rates then in effect. Tenant shall pay for all support services provided by Landlord's contractors at Tenant's request or at Landlord's discretion resulting from breaches or defaults by Tenant under this Work Letter. Tenant shall arrange and pay for removal of construction debris and shall not place debris in the Building's waste containers. If required by Landlord, Tenant shall sort and separate its waste and debris for recycling and/or environmental law compliance purposes.

(i) Tenant shall permit access to the Premises, and the Work shall be subject to inspection by Landlord and Landlord's architects, engineers, contractors and other representatives, at all times during the period in which the Work is being constructed and installed, and following completion of the Work. Landlord shall use reasonable efforts to schedule such inspections so as to not interfere with the Work; provided however, that Landlord shall have no obligation to schedule inspections or other site visits to be made by Landlord's construction project manager identified in Paragraph 9 hereof.

(j) Tenant shall proceed with its work expeditiously, continuously and efficiently, and shall use commercially reasonable efforts to complete the same in accordance with the construction schedule. Tenant shall notify Landlord upon completion of the Work and shall furnish Landlord (and Landlord's title insurance company, if any) with such further documentation as may be necessary under Paragraph 8 below, including, without limitation, a copy of the final as-built plans for the Work.

(k) Tenant shall have no authority to deviate from the Approved Plans in performance of the Work, except as authorized by Landlord and its designated representative in writing. Tenant shall within thirty (30) days after completion of the Work furnish to Landlord "as-built" drawings of the Work prepared by a certified architect.

(l) Landlord shall have the right to run utility lines, pipes, conduits, duct work and component parts of all mechanical and electrical systems where necessary or desirable as a result of the Work through the Premises, to repair, alter, replace or remove the same, and to require Tenant to install and

maintain proper access panels thereto.

(m) Tenant shall impose on and enforce all applicable terms of this Work Letter against Tenant's architect and Tenant's Contractors.

7. Insurance and Indemnification.

(a) In addition to any insurance which may be required under the Lease, Tenant shall secure or cause to be secured, pay for or cause to be paid for and maintain or cause Tenant's Contractors to secure, pay for and maintain during the continuance of construction and fixturing work within the Building or Premises, insurance in the following minimum coverages and the following minimum limits of liability:

(i) Worker's Compensation and Employer's Liability Insurance with limits of not less than such amounts as may be required from time to time by law.

(ii) Comprehensive General Liability Insurance (including Contractors' Protective Liability) in an amount not less than $2,000,000.00 (combined single limit). Such insurance shall provide for explosion and collapse, completed operations coverage and broad form blanket contractual liability coverage and shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others and arising from its operations under the contracts whether such operations are performed by Tenant's Contractors or by anyone directly or indirectly employed by any of them.

(iii) Comprehensive Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, or non-owned in an amount not less than $500,000.00 for each person in one accident, and $1,000,000.00 for injuries sustained by two or more persons in any one accident and property damage liability in an amount not less than $1,000,000.00 for each accident. Such insurance shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others arising from its operations under the contracts, whether such operations are performed by Tenant's Contractors, or by anyone directly or indirectly employed by any of them.

(iv) "All-risk" builder's risk insurance upon the entire Work to the full insurable value thereof. This insurance shall include the interests of Landlord and Tenant (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the Work and shall insure against the perils of fire and extended coverage and shall include "all-risk" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If portions of the Work stored off the site of the Building or in transit to said site are not covered under said "all-risk" builder's risk insurance, then Tenant shall effect and maintain similar property insurance on such portions of the Work. Any loss insured under said "all-risk" builder's risk insurance shall be adjusted between Landlord and Tenant and made payable to Landlord, as trustee for the insureds, as their interests may appear.

All policies (except the worker's compensation policy) shall be endorsed to include as additional insured parties the parties listed on, or required by, the Lease, Landlord's contractors, Landlord's architects, and their respective beneficiaries, partners, directors, officers, employees and agents, and such additional persons as Landlord may designate. The waiver of subrogation provisions contained in the Lease shall apply to all insurance policies (except the worker's compensation policy) to be obtained by Tenant pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause.

(b) Without limitation of the indemnification provisions contained in the Lease, to the fullest extent permitted by law Tenant agrees to indemnify, protect, defend and hold harmless Landlord, the parties listed, or required by, the Lease to be named as additional insureds, Landlord's contractors, Landlord's architects, and their respective beneficiaries, partners, directors, trustees, officers, employees and agents, from and against all claims, liabilities, losses, damages and expenses of whatever nature arising out of or in connection with the Work or the entry of Tenant or Tenant's Contractors into the Building and the Premises, without limitation, mechanic's liens, the cost of any repairs to the Premises or Building necessitated by activities of Tenant or Tenant's Contractors, bodily injury to persons or damage to the property of Tenant, its employees, agents, invitees, licensees or others. It is understood and agreed that the foregoing indemnity shall be in addition to the insurance requirements described above and shall not be in discharge of or in substitution for same or any other indemnity or insurance provision of the Lease.

8. Completion of Work. Upon completion of the Work, Tenant shall furnish Landlord with full and final waivers of liens and contractors' and architects' affidavits and statements, in such form as may be required by Landlord, Landlord's title insurance company and Landlord's construction or permanent lender, if any, from all parties performing labor or supplying materials or services in connection with the Work showing that all of said parties have been compensated in full and waiving all liens in connection with the Premises and Building. Tenant shall submit to Landlord a detailed breakdown of Tenant's total construction costs, together with such evidence of payment as is satisfactory to Landlord.

9. On-Site Project Manager; Authorities for Action. Landlord hereby appoints Tom Smith, whose address is United Properties LLC, 3500 West 80th Street, Bloomington, Minnesota, 55431 and whose telephone number is 952-893-8873 as Landlord's agent with respect to the matters set forth in this Work Letter and Tenant hereby appoints Phil Gerlach, whose address is 3955 Annapolis Lane North, Plymouth, Minnesota, 55447,and whose telephone number is 763-551-6791, as Tenant's agent and on-site project manager with respect to the matters set forth in this Work Letter. Each of such persons shall be the sole person who will receive and communicate all questions, decisions and other matters as to the party such person represents. Each of such parties will make such communications as is required of him within the times specified therefor in this Work Letter or in the Lease, time being of the essence. Landlord or Tenant may change the person constituting the authority for action by written notice to the other party given in accordance with the Lease. Any person other than Tom Smith or Phil Gerlach appointed by Landlord or Tenant as agent under this Paragraph 9 shall be reasonably acceptable to the other party and shall be qualified, in accordance with this Paragraph 9 to perform his or her duties hereunder.

Tenant's on-site manager shall be familiar with all rules and regulations and procedures of the Building and all personnel of the Building engaged directly or indirectly in the management, operation and construction of the Building. The entire cost and expense of Tenant's on-site project manager shall be borne and paid for by Tenant.

10. Miscellaneous.

(a) Time is of the essence of this Work Letter Agreement.

(b) If Tenant fails to make any payment relating to the Work as required hereunder, Landlord, at its option, may complete the Work pursuant to the Approved Plans and continue to hold Tenant liable for the costs thereof and all other costs due to Landlord. Tenant's failure to pay any amounts owed by Tenant hereunder when due or Tenant's failure to perform its obligations hereunder shall also constitute a default under the Lease and Landlord shall have

all the rights and remedies granted to Landlord under the Lease for nonpayment of any amounts owed thereunder or failure by Tenant to perform its obligations thereunder. Notwithstanding the foregoing, Tenant may contest any lien filed against the Premises or the Building for work performed or material supplied if, within thirty (30) days after the filing of any lien arising from work performed, materials furnished or other obligation incurred by Tenant, Tenant shall provide security for such lien upon such terms and conditions, including, without limitation, conditions for the release of said security to Landlord, as Landlord, in Landlord's sole discretion, may require. If, within said thirty (30) day period, Tenant fails to either (a) cause such lien to be discharged; or (b) provide the security on the terms and conditions required by the preceding sentence, then, the same shall constitute an event of default hereunder; provided however, that, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord and all costs and expenses, including reasonable attorney's fees incurred by Landlord in procuring the discharge of such lien, shall be due and payable in full by Tenant to Landlord on demand. Tenant hereby agrees to defend and indemnify Landlord and to hold Landlord harmless from and against any such lien or claim or action thereon, and shall reimburse Landlord, as additional rent for Landlord's costs of suit and all attorneys' fees and costs incurred in connection with the removal of any such lien, claim or action. Landlord hereby reserves the right, at any time and from time to time during the construction of the Premises or any subsequent alteration to enter onto the Premises and post and review notices in accordance with Minn. Stat. 514.06, as the same may be amended.

(c) Notices under this Work Letter shall be given in the same manner as under the Lease.

(d) The headings in this Work Letter are for convenience only.

(e) This Work Letter sets forth the entire agreement of Tenant and Landlord regarding the Work. This Work Letter may only be amended if in writing, duly executed by both Landlord and Tenant.

(f) All amounts due from Tenant hereunder, if any, shall be deemed to be Rent due under the Lease.

11. Limitation of Landlord's Liability. If Landlord is ever adjudged by any court to be liable to Tenant, Tenant specifically agrees to look solely to Landlord's interest in the Building for the recovery of any judgment from Landlord, it being agreed that none of Landlord, its directors, officers, shareholders, managing agents, employees or agents shall be personally liable for any such judgment. In no event shall Landlord ever be liable to Tenant, Tenant's agents, servants or employees, or to any person or entity claiming by or through Tenant, for any consequential, indirect, special or similar types of damages.

12. Lease Provisions. The terms and provisions of the Lease are hereby amended and supplemented. In the event of any conflict between the provisions of the Lease and the provisions of this Work Letter, the provisions of this Work Letter shall control. All amounts payable by Tenant to Landlord under this Work Letter, if any, shall be deemed to be Additional Rent under the Lease and, upon any default in the payment of same, Landlord shall have all of the rights and remedies provided for in the Lease. The pursuit of any remedies by Tenant in connection with any breach by Landlord of its obligations under this Work Letter shall be subject to the provisions of Paragraph 11 hereof and subject to any other limitations stated in the Lease.

IN WITNESS WHEREOF, this Work Letter Agreement is executed as of the date first written above.

ST. PAUL PROPERTIES, INC.	PROTEIN DESIGN LABS, INC.
By: _____________________________	By: _____________________________
Its: ____________________________	Its: ____________________________

EXHIBIT C

RULES AND REGULATIONS FOR

PLYMOUTH BUSINESS CENTER

1. The sidewalks, passages and stairways, if any, shall not be obstructed by Tenant or used for any purpose other than for ingress to and egress from the Premises. The passages, entrances, stairways, if any, balconies, if any, and roof are not for the use of the general public, and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests to the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to person with whom Tenant normally deals in the ordinary course of its business unless such persons are engaged in illegal activities. Tenant and its employees shall not go upon the roof of the Building without the written consent of the Landlord.

2. The sashes, sash doors, windows, glass lights and any lights or skylights that reflect or admit light into halls, from the building exterior or other places into the building shall not be covered or obstructed. Any curtains, blinds, shades, or screens attached or hung to any of the prior mentioned areas must have prior approval of Landlord. Landlord will provide standard window coverings on exterior windows and other glass if appropriate and Landlord reserves the right to regulate position of such coverings.

3. In case of invasion, riot, public excitement or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of same. Landlord shall in no case be liable for damages for the admission or exclusion of any person to or from the Building. Landlord has the right to evacuate the Building in the event of an emergency or catastrophe.

4. Two door keys for doors to leased premises shall be furnished at the commencement of a lease by Landlord. All duplicate keys shall be purchased only from the Landlord. One security card per each of Tenant's employees so authorized by Tenant will be issued for all approved personnel to permit after-

hour access. Tenant shall not alter any lock, or install new or additional locks or bolts, on any door without the prior written approval of Landlord. In the event such alteration or installation is approved by Landlord, Tenant shall supply Landlord with a key for any such lock or bolt. Tenant, upon the termination of the tenancy, shall deliver to Landlord all the keys, locks, bolts, cabinets, safes or vaults, or the means of opening any lockable device and security cards of offices, rooms and toilet rooms which shall have been furnished Tenant or which Tenant shall have had made, and in the event of loss of any keys or security cards so furnished shall pay the Landlord therefor.

5. All deliveries, including intra-company deliveries, must be made via service entrances. Tenant agrees to adhere to floor loading maximum levels as stated by Landlord. All damage done to the Building by the delivery or removal of such items, or by reason of their presence in the Building, shall be paid to Landlord upon demand by Tenant and shall constitute Additional Rent under the Lease.

6. Parking area and parking policies will be established by Landlord, and Tenant agrees to adhere to said policies. UPON A COMPLAINT BY TENANT AND OTHER TENANTS OF THE BUILDING AND AT ANY OTHER TIME, Landlord reserves the right to IMPLEMENT AND institute new parking policies as they are determined to benefit overall Building operations. Tenant agrees to leave no cars, vans or other vehicles overnight or over any weekend in any parking area. Tenant further agrees that its employees will not park in the visitor parking areas at any time.

7. If Tenant desires signal, communication, alarm or other utility or service connection installed or changed, the same shall be made at the expense of Tenant, with approval and under direction of Landlord, it being understood and agreed that (a) no audible alarm shall be installed unless specifically approved in writing by Landlord prior to installation; and (b) only Tenant shall be obligated to respond to such signal, communication, alarm or other utility or service connection, and none of Landlord, Landlord's Managing Agent or other employee, agent or contractor of Landlord shall, under any circumstances have any obligation to Tenant or others to respond to such alarm or be liable to Tenant or any party claiming by or through Tenant for any failure to do so. Any installations, and the boring or cutting for wires, shall be made at the sole cost and expense of Tenant and under control and direction of Landlord. Landlord retains in all cases the right to require (x) the installation and use of such electrical-protecting devices that prevents the transmission of excessive current or electricity into or transmission of excessive current or electricity into or through the Building (y) the changing of wires and of their installation and arrangement underground or otherwise as Landlord may direct, and (z) compliance on the part of all using or seeking access to such wires with such rules as Landlord may establish relating thereto. All such wires used by Tenant must be clearly tagged at the distribution boards and junction box and elsewhere in the Building, with (h) the number of the Premises to which said wires lead, (i) the purpose for which said wires are used and (j) the name of the company operating same.

Tenant agrees to instruct all approved communication, and computer and other cabling installers to attach cable in wire hangers from the deck or in any designated building floor or ceiling system cable location. Tenant will not allow installers to lay any cabling on top of the suspended layer ceiling system.

8. Tenant shall give Landlord prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electrical facilities or any part of appurtenances of the Premises.

9. Tenant assumes full responsibility for protecting its space from theft, robbery, and pilferage, which includes keeping doors locked and other means of entry to the space closed and secured. Landlord shall be in no way responsible to Tenant, its agents, employees, licensees, contractors or invitees for any loss of property from the Premises or public areas or for any damages to any property thereon from any cause whatsoever.

10. Tenant shall not install or operate machinery or any mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises without the prior written permission of the Landlord. Tenant shall not place in or move about the Premises any safe or other heavy article which, in Landlord's reasonable opinion may damage the Premises (including the slab) or overload the floor of the Premises, shall not mark on or drive nails, screw or drill into the partitions, woodwork or plaster (except as may be incidental to the hanging of wall decorations) and shall not in any way deface the Premises or any part thereof.

11. No person or contractor not employed by Landlord shall be used to perform window washing, decorating, repair or other work in the leased Premises without the express written consent of Landlord.

12. The directories of the Building shall be used exclusively for the display of the name and location only of the tenants of the Building, including Tenant, and will be provided at the expense of Landlord. Any additional names requested by Tenant to be displayed in the directories must be approved by Landlord and, if approved, will be provided at the sole expense of Tenant.

13. Tenant shall not and shall ensure that its agents, servants, employees, licensees, contractors or invitees shall not:

(a) enter into or upon the roof of the Building or any storage, electrical or telephone closet, or heating, ventilation, air- conditioning, mechanical or elevator machinery housing areas;

(b) sweep or throw any dirt or other substance into ANY passageway, sidewalk or parking area;

(c) bring in or keep in the Premises any firearms, vehicles, bicycles, motorcycles or animals of any kind, except seeing-eye or hearing-ear dogs or other animals required by Tenant's employees, agents, contractors or invitees to perform their normal life activities;

(d) deposit any trash, refuse or other substance of any kind within or out of the Building, except in the refuse containers provided therefor;

(e) permit the operation any device that may produce an odor, cause music, vibrations of air waves to be heard or felt outside the Premises, or which may emit electrical waves that shall impair radio, television or any other form of communication system; or

(f) permit the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment or permit smoking of cigarettes, cigars or pipes (i) in the common areas of the Building, including, without limitation, restrooms, except common areas which have been designated by Landlord in writing as smoking areas; or (ii) within ten (10) yards of any door leading into the Building or any building comprising a part thereof.

14. Tenant will not install any radio or television antennas or receptor dish or any device on the roof or grounds without the prior written approval of Landlord. Tenant understands that rentals are charged for roof space in the event any roof installation is approved in writing by Landlord. Landlord reserves the right to require removal of any approved installed device in the event it is necessary to do so in Landlord's opinion.

15. No sign, light, name placard, poster advertisement or notice visible from the exterior of any demised premises, shall be placed, inscribed, painted or affixed by Tenant on any part of the Building without the prior written approval of Landlord. All signs or letterings on doors, or otherwise, approved by Landlord shall be inscribed, painted or affixed at the sole cost and expense of Tenant, by a person approved by Landlord.

16. The toilet-rooms, toilet, urinals, wash bowls and water apparatus shall not be used for any purpose other than those for which they were constructed or installed, and no sweeping, rubbish, chemicals or other unsuitable substances shall be thrown or placed therein. Tenant shall bear the expense of repairing

and cleaning up any breakage, stoppage or damage resulting from violation(s) of this rule by Tenant or its agents, servants, employees, invitees, licensees or visitors.

17. Tenant must have Landlord's prior written consent before using the name of the Building and/or pictures of the Building in advertising or other publicity.

18. Tenant shall not make any room-to-room canvass to solicit business from other tenants in the Building, and shall not exhibit, sell or offer to sell, use, rent or exchange in or from the Premises unless ordinarily embraced within Tenant's use of the Premises specified herein.

19. Tenant shall not do any cooking in the Premises, except that Tenant may install a microwave oven and coffee makers for the use of its employees in the Premises. Under no circumstances shall Tenant install or use any hot plates.

20. No portion of Tenant's area or any other part of the Building shall at any time be used or occupied as sleeping or lodging quarters.

21. Landlord has the right to enact trash removal and trash recycling rules and regulations as necessary to control trash removal costs or as required by the laws of the State of Minnesota and/or the United States of America. Tenant agrees to adhere to such trash removal regulations and to any and all modifications thereof issued by Landlord from time to time.

22. Tenant will refer all contractors, contractors' representatives and installation technicians rendering any service to Tenant to Landlord for Landlord's supervision, approval and control before performance of any contractual service. This provision shall apply to any work performed in the Building including installations of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building.

23. Tenant shall not permit picketing or other union activity involving its employees in the Building except in those locations and subject to time and other limitations as to which Landlord may give prior written consent.

24. Tenant shall not conduct, or permit to be conducted on or from the Premises, any auction of Tenant's personal property, any liquidation sale, any going-out-of-business sale or other similar activity.

25. Landlord reserves the right to rescind, make reasonable amendments, modifications and additions to the rules and regulations heretofore set forth, and to make additional reasonable rules and regulations, as in Landlord's sole judgment may from time-to-time be needed for the safety, care, cleanliness and preservation of good order of the Building, and Landlord agrees that it shall notify Tenant, in writing of any such amendments, modifications and additional or additional rules and regulations. Landlord shall not be responsible for any violation of the foregoing rules and regulations by other tenants of the Building and shall have no obligation to enforce the same against other tenants.

EXHIBIT D

TENANT'S DECEMBER 31, 2000, AUDITED FINANCIAL STATEMENTS

LEASE AGREEMENT

THIS LEASE, made this 28th day of June, 2001, between **JOHN ARRILLAGA, Trustee, or his Successor Trustee, UTA dated 7/20/77 (JOHN ARRILLAGA SURVIVOR'S TRUST) as amended, and RICHARD T. PEERY, Trustee, or his Successor Trustee, UTA dated 7/20/77 (RICHARD T. PEERY SEPARATE PROPERTY TRUST) as amended**, hereinafter called Landlord, and **PROTEIN DESIGN LABS, INC., a Delaware corporation**, hereinafter called Tenant.

WITNESSETH:

Landlord hereby leases to Tenant and Tenant hereby hires and takes from Landlord those certain premises (the "Premises") outlined in Red on Exhibit A, attached hereto and incorporated herein by this reference thereto more particularly described as follows:

A portion of that certain 41,472± square foot, one-story building located at **34810 Campus Drive, Fremont California 94555**, consisting of approximately **11,265± square feet of space**. Said Premises is more particularly shown within the area outlined in Red on Exhibit A attached hereto. The entire parcel, of which the Premises is a part, is shown within the area outlined in Green on Exhibit A attached. The Premises shall be improved by Landlord as shown on Exhibit B attached hereto, and **is leased on an "as-is" basis**, in its present condition, and in the configuration as shown in Red on Exhibit B attached hereto.

The word "Premises" as used throughout this Lease is hereby defined to include the nonexclusive use of landscaped areas, sidewalks and driveways in front of or adjacent to the Premises, and the nonexclusive use of the area directly underneath or over such sidewalks and driveways. The gross leasable area of the building shall be measured from outside of exterior walls to outside of exterior walls, and shall include any atriums, covered entrances or egresses and covered building loading areas.

Said letting and hiring is upon and subject to the terms, covenants and conditions hereinafter set forth and Tenant covenants as a material part of the consideration for this Lease to perform and observe each and all of said terms, covenants and conditions. This Lease is made upon the conditions of such performance and observance.

1. **USE**. Tenant shall use the Premises only in conformance with applicable governmental laws, regulations, rules and ordinances for the purpose of general office, and storage uses necessary for Tenant to conduct Tenant's business, provided that such uses shall be in accordance with all current and future applicable governmental laws and ordinances and zoning restrictions, and for no other purpose. Tenant shall not do or permit to be done in or about the Premises nor bring or keep or permit to be brought or kept in or about the Premises anything which is prohibited by or will in any way increase the existing rate of (or otherwise affect) fire or any insurance covering the Premises or any part thereof, or any of its contents, or will cause a cancellation of any insurance covering the Premises or any part thereof, or any of its contents. Tenant shall not do or permit to be done anything in, on or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Premises or neighboring premises or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. No sale by auction shall be permitted on the Premises. Tenant shall not place any loads upon the floors, walls, or ceiling which endanger the structure, or place any harmful fluids or other materials in the drainage system of the building, or overload existing electrical or other mechanical systems. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or outside of the building in which the Premises are a part, except in trash containers placed inside exterior enclosures designated by Landlord for that purpose or inside of the building proper where designated by Landlord. No materials, supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature shall be stored upon or permitted to remain outside the Premises. Tenant shall not place anything or allow anything to be placed near the glass of any window, door partition or wall which may appear unsightly from outside the Premises. No loudspeaker or other device, system or apparatus which can be heard outside the Premises shall be used in or at the Premises without the prior written consent of Landlord. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Tenant shall indemnify, defend and hold Landlord harmless against any loss, expense, damage, reasonable attorneys' fees, or liability arising out of failure of Tenant to comply with any applicable law for which Tenant is obligated to comply under the terms of this Lease. Tenant shall comply with any covenant, condition, or restriction ("CC&R's") affecting the Premises. Landlord has provided a copy of said CC&R's to Tenant. The provisions of this Paragraph are for the benefit of Landlord only and shall not be construed to be for the benefit of any Tenant or occupant of the Premises.
2. **TERM**.
   A. The Term of this Lease shall be for a period of **THREE (3) years** (unless sooner terminated as hereinafter provided) and, subject to Paragraphs 2B and 3, shall **commence (the "Commencement Date") on the 1st day of August, 2001 and end on the 31st day of July, 2004.**
   B. Possession of the Premises shall be tendered by Landlord to Tenant and the Term of the Lease shall commence when the first of the following occurs:
      a. Upon the occupancy of the Premises by any of Tenant's operating personnel; or
      b. When the Tenant Improvements have been substantially completed for Tenant's use and occupancy, in accordance and compliance with Exhibit B of this Lease Agreement; or
      c. As otherwise agreed in writing.

   It is agreed in the event said Lease commences on a date other than the first day of the month the Term of the Lease will be extended to account for the number of days in the partial month. The Basic Rent during the resulting partial month will be pro-rated (for the number of days in the partial month) at the Basic Rent rate scheduled for the projected Commencement Date as shown in Paragraph 4A.

3. **POSSESSION**. If Landlord, for any reason whatsoever, cannot deliver possession of said Premises to Tenant at the commencement of the said Term, as hereinbefore specified, this Lease shall not be void or voidable; no obligation of Tenant shall be affected thereby; nor shall Landlord or Landlord's agents be liable to Tenant for any loss or damage resulting therefrom; but in that event the commencement and termination dates of the Lease, and all other dates affected thereby shall be revised to conform to the date of Landlord's delivery of

possession, as specified in Paragraph 2B above. The above is, however, subject to the provision that the period of delay of delivery of the Premises shall not exceed sixty (60) days from the Commencement Date herein (except those delays caused by Acts of God, strikes, war, utilities, governmental bodies, weather, unavailable materials, and delays beyond Landlord's control shall be excluded in calculating such period) in which instance Tenant, at its option, may, by written notice to Landlord, terminate this Lease; provided Tenant submits said notice to Landlord prior to the expiration of said 60 day period.

4. **RENT**.
   A. *Basic Rent*. Tenant agrees to pay to Landlord at such place as Landlord may designate without deduction, offset, prior notice, or demand, and Landlord agrees to accept as Basic Rent for the Leased Premises the total sum of ONE MILLION ONE HUNDRED FIFTY FIVE THOUSAND SEVEN HUNDRED EIGHTY NINE AND NO/100 DOLLARS ($1,155,789.00) in lawful money of the United States of America, payable as follows:

      On August 1, 2001, the sum of THIRTY THOUSAND NINE HUNDRED SEVENTY EIGHT AND 75/100 DOLLARS ($30,978.75) shall be due, and a like sum due on the first day of each month thereafter, through and including July 31, 2002.

      On August 1, 2002, the sum of THIRTY TWO THOUSAND ONE HUNDRED FIVE AND 25/100 DOLLARS ($32,105.25) shall be due, and a like sum due on the first day of each month thereafter, through and including July 1, 2003.

      On August 1, 2003, the sum of THIRTY THREE THOUSAND TWO HUNDRED THIRTY ONE AND 75/100 DOLLARS ($33,231.75) shall be due, and a like sum due on the first day of each month thereafter, through and including July 1, 2004; or until the entire aggregate sum of ONE MILLION ONE HUNDRED FIFTY FIVE THOUSAND SEVEN HUNDRED EIGHTY NINE AND NO/100 DOLLARS ($1,155,789.00) has been paid.

   B. *Time for Payment*. Full monthly Rent is due in advance on the first day of each calendar month. In the event that the Term of this Lease commences on a date other than the first day of a calendar month, on the date of commencement of the Term hereof Tenant shall pay to Landlord as Rent for the period from such date of commencement to the first day of the next succeeding calendar month that proportion of the monthly Rent hereunder for the number of days between such date of commencement and the first day of the next succeeding calendar month. In the event that the Term of this Lease for any reason ends on a date other than the last day of a calendar month, on the first day of the last calendar month of the Term hereof Tenant shall pay to Landlord as Rent for the period from said first day of said last calendar month to and including the last day of the Term hereof that proportion of the monthly Rent hereunder for the number of days between said first day of said last calendar month and the last day of the Term hereof.
   C. *Late Charge*. Notwithstanding any other provision of this Lease, if Tenant is in default in the payment of Rent as set forth in this Paragraph 4 when due, or any part thereof, Tenant agrees to pay Landlord, in addition to the delinquent Rent due, a late charge for each Rent payment in default ten (10) days. Said late charge shall equal ten percent (10%) of each Rent payment so in default.
   D. *Additional Rent*. Beginning with the Commencement Date of the Term of this Lease, Tenant shall pay to Landlord or to Landlord's designated agent in addition to the Basic Rent and as Additional Rent the following:
      a. All Taxes relating to the Premises as set forth in Paragraph 13, and
      b. All insurance premiums and deductibles relating to the Premises, as set forth in Paragraph 17, and
      c. All charges, costs and expenses, which Tenant is required to pay hereunder, together with all interest and penalties, costs and expenses including reasonable attorneys' fees and legal expenses, that may accrue thereto in the event of Tenant's failure to pay such amounts, and all damages, reasonable costs and expenses which Landlord may incur by reason of default of Tenant or failure on Tenant's part to comply with the terms of this Lease. In the event of nonpayment by Tenant of Additional Rent, Landlord shall have all the rights and remedies with respect thereto as Landlord has for nonpayment of Rent, and
      d. All prorated costs and expenses related to the Ardenwood Property Owners' Association as set forth in Paragraph 46.

      The Additional Rent due hereunder shall be paid to Landlord or Landlord's agent (i) within five days for taxes and insurance and within thirty (30) days for all other Additional Rent items after presentation of invoice from Landlord or Landlord's agent setting forth such Additional Rent (notwithstanding anything to the contrary herein, Landlord shall not be required to submit ongoing monthly statements to Tenant reflecting amounts owed as Additional Rent) and/or (ii) at the option of Landlord, Tenant shall pay to Landlord monthly, in advance, Tenant's prorata share of an amount estimated by Landlord to be Landlord's approximate average monthly expenditure for such Additional Rent items, which estimated amount shall be reconciled within one hundred twenty (120) days of the end of each calendar year or more frequently if Landlord elects to do so at Landlord's sole and absolute discretion as compared to Landlord's actual expenditure for said Additional Rent items, with Tenant paying to Landlord, upon demand, any amount of actual expenses expended by Landlord in excess of said estimated amount, or Landlord crediting to Tenant (providing Landlord may withhold any amount thereof required to cure Tenant's default in the performance of any of the terms, covenants and conditions of this Lease) any amount of estimated payments made by Tenant in excess of Landlord's actual expenditures for said Additional Rent Items. Within thirty (30) days after receipt of Landlord's reconciliation, Tenant shall have the right, at Tenant's sole expense, to audit, at a mutually convenient time at Landlord's office, Landlord's records specifically limited to the foregoing expenses. Such audit must be conducted by Tenant or an independent nationally recognized accounting firm that is not being compensated by Tenant or other third party on a contingency fee basis. Tenant shall submit to Landlord a complete copy of said audit at no expense to Landlord and a written notice stating the results of said audit, and if such notice by Tenant and the respective audit reveals that Landlord has overcharged Tenant, and the audit is not challenged by Landlord, the amount overcharged shall be credited to Tenant's account within thirty (30) days after completion of Landlord's review and approval of said audit. Landlord shall make reasonable efforts to respond to Tenant's audit request within ninety (90) days of receipt of the same; however, in the event that Landlord is unable to respond within that time period, Landlord shall not have waived its rights to respond to said audit.

   E. *Fixed Management Fee*. Beginning with the Commencement Date of the Term of this Lease, Tenant shall pay to Landlord, in addition to the Basic Rent and Additional Rent, a fixed monthly management fee ("Management Fee") equal to three percent (3%) of the Basic Rent due for each month during the Lease Term.

      The reference to "Rent" in this Paragraph 4 includes Basic Rent, Additional Rent, and fixed Management Fee. The respective obligations of Landlord and Tenant under this Paragraph shall survive the expiration or other termination of the Term of this Lease, and if the Term hereof shall expire or shall otherwise terminate on a day other than the last day of a calendar year, the actual Additional Rent incurred for the calendar year in which the Term hereof expires or otherwise terminates shall be determined and

settled on the basis of the statement of actual Additional Rent for such calendar year and shall be prorated in the proportion which the number of days in such calendar year preceding such expiration or termination bears to 365.

F. *Place of Payment of Rent*. All Rent hereunder shall be paid to Landlord at the office of Landlord at: PEERY/ARRILLAGA, FILE 1504, BOX 60000, SAN FRANCISCO, CA 94160, or to such other person or to such other place as Landlord may from time to time designate in writing.

G. *Security Deposit*. Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the sum of SIXTY SIX THOUSAND FOUR HUNDRED SIXTY THREE AND 50/100 Dollars ($66,463.50). Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of Rent and any of the monetary sums due herewith, Landlord may (but shall not be required to) use, apply or retain all or any part of this Security Deposit for the payment of any other amount which Landlord may spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Deposit is so used or applied, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in the amount sufficient to restore the Security Deposit to its original amount. Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Deposit. If Tenant fully and faithfully performs every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or at Landlord's option, to the last assignee of tenant's interest hereunder) at the expiration of the Lease Term and after Tenant has vacated the Premises; provided, however, that Landlord may withhold therefrom the amount necessary to cover the cost of restoration of the Premises if Tenant fails to do so as required under Lease Paragraph 5 and to cure any then uncured default by Tenant under this Lease. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said Deposit to Landlord's successor in interest whereupon Tenant agrees to release Landlord from liability for the return of such Deposit or the accounting therefor.

5. **ACCEPTANCE AND SURRENDER OF PREMISES**. By entry hereunder, Tenant accepts the Premises as being in good and sanitary order, condition and repair and accepts the building and improvements included in the Premises in their present condition and without representation or warranty by Landlord as to the condition of such building or as to the use or occupancy which may be made thereof. Any exceptions to the foregoing must be by written agreement executed by Landlord and Tenant. Tenant agrees on the last day of the Lease Term, or on the sooner termination of this Lease, to surrender the Premises promptly and peaceably to Landlord in good condition and repair (damage by Acts of God, fire, normal wear and tear excepted), with all interior walls painted, or cleaned so that they appear freshly painted, and repaired or replaced, if damaged; all floors cleaned and waxed; all carpets cleaned and shampooed; all broken, marred or nonconforming acoustical ceiling tiles replaced; all windows washed; the air conditioning and heating systems serviced by a reputable and licensed service firm and in good operating condition and repair; the plumbing and electrical systems and lighting in good order and repair, including replacement of any burned out or broken light bulbs or ballasts; the lawn and shrubs in good condition including the replacement of any dead or damaged plantings; the sidewalk, driveways and parking areas in good order, condition and repair (said landscaping, sidewalks, driveways and parking areas are considered Common Areas of the Parcel and shall be maintained by Landlord throughout the Term of the Lease; however Tenant shall be responsible for its proportionate share of any maintenance, repairs, and/or replacements which are completed during the Lease Term); together with all alterations, additions, and improvements which may have been made, in, to, or on the Premises (except moveable trade fixtures installed at the expense of Tenant) except that Tenant shall ascertain from Landlord within thirty (30) days before the end of the Term of this Lease whether Landlord desires to have the Premises or any part or parts thereof restored to their condition and configuration as when the Premises were delivered to Tenant and if Landlord shall so desire, then Tenant shall restore said Premises or such part or parts thereof before the end of this Lease at Tenant's sole cost and expense. Tenant, on or before the end of the Term or sooner termination of this Lease, shall remove all of Tenant's personal property and trade fixtures from the Premises, and all property not so removed on or before the end of the Term or sooner termination of this Lease shall be deemed abandoned by Tenant and title to same shall thereupon pass to Landlord without compensation to Tenant. Landlord may, upon termination of this Lease, remove all moveable furniture and equipment so abandoned by Tenant, at Tenant's sole cost, and repair any damage caused by such removal at Tenant's sole cost. Upon surrender of the Premises to Landlord, Tenant shall provide Landlord with keys for all interior locking doors and Tenant agrees to pay to Landlord the cost of Landlord re-keying (i) all exterior doors (including mechanical rooms) and (ii) all interior doors with locks to which Tenant is not able to provide Landlord keys. If Tenant has installed a cardkey system, Tenant shall also be responsible for the costs Landlord incurs in replacing the doors and/or door frames in which such cardkey system was installed and removing any and all equipment and wiring related thereto. If the Premises be not surrendered at the end of the Term or sooner termination of this Lease, Tenant shall indemnify Landlord against loss or liability resulting from the delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding Tenant founded on such delay. Nothing contained herein shall be construed as an extension of the Term hereof or as a consent of Landlord to any holding over by Tenant. The voluntary or other surrender of this Lease or the Premises by Tenant or a mutual cancellation of this Lease shall not work as a merger and, at the option of Landlord, shall either terminate all or any existing subleases or subtenancies or operate as an assignment to Landlord of all or any such subleases or subtenancies.

6. **"AS-IS" BASIS**. Subject only to Landlord making the improvements shown on Exhibit B attached hereto, it is hereby agreed that the Premises leased hereunder is leased strictly on an "as-is" basis and in its present condition, and in the configuration as shown on Exhibit B attached hereto, and by reference made a part hereof. Subject to Landlord's maintenance of the Common Areas of the Building and Parcel pursuant to Paragraph 11 below, it is specifically agreed between the parties that after Landlord makes the interior improvements as shown on Exhibit B, Landlord shall not be required to make, nor be responsible for any cost, in connection with any repair, restoration, and/or improvement to the Premises in order for this Lease to commence, or thereafter, throughout the Term of this Lease. Notwithstanding anything to the contrary within this Lease, Landlord makes no warranty or representation of any kind or nature whatsoever as to the condition or repair of the Premises, nor as to the use or occupancy which may be made thereof.

7. **ALTERATIONS AND ADDITIONS**. Tenant shall not make, or suffer to be made, any alteration or addition to the Premises, or any part thereof, without the written consent of Landlord first had and obtained by Tenant (such consent not to be unreasonably withheld), but at the cost of Tenant, and any addition to, or alteration of, the Premises, except moveable furniture and trade fixtures, shall at once become a part of the Premises and belong to Landlord. Landlord reserves the right to approve all contractors and mechanics proposed by Tenant to make such alterations and additions. As a condition to Landlord granting its consent to any alterations, Tenant shall deliver plans and specifications for Landlord's review and approval, and within five business days of completion of said alterations, Tenant shall deliver to Landlord an original 1/8" scaled sepia or an other electronic format as solely determined by Landlord. Tenant shall retain title to all moveable furniture and trade fixtures placed in the Premises. All heating, lighting, electrical, air conditioning, security systems, floor to ceiling partitioning, drapery, carpeting, and floor installations made by Tenant, together with all property that has become an integral part of the Premises, shall not be deemed trade fixtures. Tenant agrees that it will not proceed to make such alteration or additions, without having obtained consent from Landlord to do so, and until five (5) days from the receipt of such consent, 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. Tenant shall, if required by Landlord, secure at Tenant's own cost and expense, a completion and lien indemnity bond, satisfactory to Landlord, for such work. Tenant further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, will be discharged by Tenant, by bond or otherwise, within ten (10) days after notice of filing thereof, at the cost and expense of Tenant. Any exceptions to the foregoing must be made in writing and executed by both Landlord and Tenant.

8. **RULES AND REGULATIONS AND COMMON AREA**. Subject to the terms and conditions of this Lease and such Rules and Regulations as Landlord may from time to time prescribe, Tenant and Tenant's employees, invitees and customers shall, in common with other occupants of the Parcel/Building in which the premises are located, and their respective employees, invitees and customers, and others entitled to the use thereof, have the non-exclusive right to use the access roads, parking areas, and facilities provided and designated by Landlord for the general use and convenience of the occupants of the Parcel/Building in which the Premises are located, which areas and facilities are referred to herein as "Common Area". This right shall terminate upon the termination of this Lease. Landlord reserves the right from time to time to make changes in the shape, size, location, amount and extent of Common Area. Landlord further reserves the right to promulgate such reasonable rules and regulations relating to the use of the Common Area, and any part or parts thereof, as Landlord may deem appropriate for the best interests of the occupants of the Parcel/Building. Such Rules and Regulations may be amended by Landlord from time to time, with or without advance notice, and all amendments shall be effective upon delivery of a copy to Tenant. Landlord shall not be responsible to Tenant for the non- performance by any other tenant or occupant of the Parcel/Building of any of said Rules and Regulations.

   Landlord shall operate, manage and maintain the Common Area. The manner in which the Common Area shall be maintained and the expenditures for such maintenance shall be at the discretion of Landlord.

9. **PARKING**. Tenant shall have the right to the nonexclusive use of sixty two (62) parking spaces in the common parking area of the building. Tenant agrees that Tenant, Tenant's employees, agents, representatives, and/or invitees shall not use parking spaces in excess of said 62 parking spaces allocated to Tenant hereunder. Landlord shall have the right, at Landlord's sole discretion, to specifically designate the location of Tenant's parking spaces within the common parking area of the building in the event of a dispute among the tenants occupying the building referred to herein, in which event Tenant agrees that Tenant, Tenant's employees, agents, representatives and/or invitees shall not use any parking spaces other than those parking spaces specifically designated by Landlord for Tenant's use. Said parking spaces, if specifically designated by Landlord to Tenant, may be relocated by Landlord at any time, and from time to time. Landlord reserves the right, at Landlord's sole discretion, to rescind any specific designation of parking spaces, thereby returning Tenant's parking spaces to the common parking area. Landlord shall give Tenant written notice of any change in Tenant's parking spaces. Tenant shall not, at any time, park, or permit to be parked, any trucks or vehicles adjacent to the loading area so as to interfere in any way with the use of such areas, nor shall Tenant, at any time, park or permit the parking of Tenant's trucks and other vehicles or the trucks and vehicles of Tenant's suppliers or others, in any portion of the common areas not designated by Landlord for such use by Tenant. Tenant shall not park nor permit to be parked, any inoperative vehicles or equipment on any portion of the common parking area or other common areas of the building. Tenant agrees to assume responsibility for compliance by its employees with the parking provision contained herein. If Tenant or its employees park in other than designated parking areas, then Landlord may charge Tenant, as an additional charge, and Tenant agrees to pay Ten Dollars ($10.00) per day for each day or partial day each such vehicle is parking in any area other than that designated. Tenant hereby authorizes Landlord, at Tenant's sole expense, to tow away from the building any vehicle belonging to Tenant or Tenant's employees parked in violation of these provisions, or to attach violation stickers or notices to such vehicles. Tenant shall use the parking area for vehicle parking only and shall not use the parking areas for storage.

10. **TENANT MAINTENANCE**. Tenant shall, at its sole cost and expense, keep and maintain the Premises (including appurtenances) and every part thereof in a high standard of maintenance and repair, and in good and sanitary condition. Subject to Landlord's maintenance of the Common Areas of the Building and Parcel pursuant to Paragraph 11 below, Tenant's maintenance and repair responsibilities herein referred to include, but are not limited to, janitorization, plumbing systems within the non-common areas of the Premises (such as water and drain lines, sinks), electrical systems within the non-common areas of the Premises (such as outlets, lighting fixtures, lamps, bulbs, tubes, ballasts), heating and air-conditioning controls within the non-common areas of the Premises (such as mixing boxes, thermostats, time clocks, supply and return grills), non-common elevators (if any), and all interior improvements within the Premises including but not limited to: wall coverings, window coverings, acoustical ceilings, vinyl tile, carpeting, partitioning, doors (both interior and exterior, including closing mechanisms, latches, locks), skylights (if any), automatic fire extinguishing systems, and all other interior improvements of any nature whatsoever. Tenant agrees to provide carpet shields under all rolling chairs or to otherwise be responsible for wear and tear of the carpet caused by such rolling chairs if such wear and tear exceeds that caused by normal foot traffic in surrounding areas. Areas of excessive wear shall be replaced at Tenant's sole expense upon Lease termination. Tenant hereby waives all rights hereunder, and benefits of, subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code and under any similar law, statute or ordinance now or hereafter in effect.

11. **EXPENSES OF OPERATION, MANAGEMENT, AND MAINTENANCE OF THE COMMON AREAS OF THE PARCEL AND BUILDING IN WHICH THE PREMISES ARE LOCATED**. As Additional Rent and in accordance with Paragraph 4D of this Lease, Tenant shall pay to Landlord Tenant's proportionate share (calculated on a square footage or other equitable basis as calculated by landlord) of all expenses of operation, management, maintenance and repair of the Common Areas of the Parcel including, but not limited to, license, permit, and inspection fees; security; utility charges associated with exterior landscaping and lighting (including water and sewer charges); all charges incurred in the maintenance and replacement of landscaped areas, lakes, parking lots and paved areas (including repairs, replacement, resealing and restriping), sidewalks, driveways, maintenance, repair and replacement of all fixtures and electrical, mechanical and plumbing systems; supplies, materials, equipment and tools; the cost of capital expenditures which have the effect of reducing operating expenses, provided, however, that in the event Landlord makes such capital improvements, Landlord may amortize its investment in said improvements (together with interest at the rate of fifteen (15%) percent per annum on the unamortized balance) as an operating expense in accordance with standard accounting practices, provided, that such amortization is not at a rate greater than the anticipated savings in the operating expenses.

    As Additional Rent and in accordance with Paragraph 4D of this Lease, Tenant shall pay its proportionate share (calculated on a square footage or other equitable basis as calculated by Landlord) of the cost of operation (including common utilities), management, maintenance, and repair of the building (including structural and common areas such as lobbies, restrooms, janitor's closets, hallways, elevators, mechanical and telephone rooms, stairwells, entrances, spaces above the ceilings and janitorization of said common areas) in which the Premises are located. The maintenance items herein referred to include, but are not limited to, all windows, window frames, plate glass, glazing, truck doors, main plumbing systems of the building (such as water drain lines, sinks, toilets, faucets, drains, showers

and water fountains), main electrical systems (such as panels and conduits), heating and air-conditioning systems (such as compressors, fans, air handlers, ducts, boilers, heaters), structural elements and exterior surfaces of the building; store fronts, roof, downspouts, building common area interiors (such as wall coverings, window coverings, floor coverings and partitioning), ceilings, building exterior doors, skylights (if any), automatic fire extinguishing systems, and elevators (if any); license, permit and inspection fees; security, supplies, materials, equipment and tools; the cost of capital expenditures which have the effect of reducing operating expenses, provided, however, that in the event Landlord makes such capital improvements, Landlord may amortize its investment in said improvements (together with interest at the rate of fifteen (15%) percent per annum on the unamortized balance) as an operating expense in accordance with standard accounting practices, provided, that such amortization is not at a rate greater than the anticipated savings in the operating expenses. Tenant hereby waives all rights hereunder, and benefits of, subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code and under any similar law, statute or ordinance now or hereafter in effect.

"Additional Rent" as used herein shall not include Landlord's debt repayments; cost for the installation of partitioning or any other tenant improvements for third party tenants; cost of attracting third party tenants; depreciation; interest; or executive salaries.

12. **UTILITIES OF THE BUILDING IN WHICH THE PREMISES ARE LOCATED**. As Additional Rent and in accordance with Paragraph 4D of this Lease Tenant shall pay its proportionate share (calculated on a square footage or other equitable basis as calculated by Landlord) of the cost of all utility charges such as water, gas, electricity, (telephone, telex and other electronic communications service, if applicable) sewer service, waste pick-up and any other utilities, materials or services furnished directly to the building in which the Premises are located, including, without limitation, any temporary or permanent utility surcharge or other exactions whether or not hereinafter imposed.

    Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of any interruption or failure of utility services to the Premises when such interruption or failure is caused by accident, breakage, repair, strikes, lockouts, or other labor disturbances or labor disputes of any nature, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord.

    Provided that Tenant is not in default in the performance or observance of any of the terms, covenants or conditions of this Lease to be performed or observed by it, Landlord shall furnish to the Premises between the hours of 8:00 am and 6:00 pm, Mondays through Fridays (holidays excepted) and subject to the rules and regulations of the Common Area hereinbefore referred to, reasonable quantities of water, gas and electricity suitable for the intended use of the Premises and heat and air-conditioning required in Landlord's judgment for the comfortable use and occupation of the Premises for such purposes. Tenant agrees that at all times it will cooperate fully with Landlord and abide by all regulations and requirements that Landlord may prescribe for the proper functioning and protection of the building heating, ventilating and air- conditioning systems. Whenever heat generating machines, equipment, or any other devices (including exhaust fans) are used in the Premises by Tenant which affect the temperature or otherwise maintained by the air-conditioning system, Landlord shall have the right to install supplementary air-conditioning units in the Premises and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord. Tenant will not, without the written consent of Landlord, use any apparatus or device in the Premises (including, without limitation), electronic data processing machines or machines using current in excess of 110 Volts which will in any way increase the amount of electricity, gas, water or air-conditioning usually furnished or supplied to premises being used as general office space, or connect with electric current (except through existing electrical outlets in the Premises), or with gas or water pipes any apparatus or device for the purposes of using electric current, gas, or water. If Tenant shall require water, gas, or electric current in excess of that usually furnished or supplied to premises being used as general office space, Tenant shall first obtain the written consent of Landlord, which consent shall not be unreasonably withheld and Landlord may cause an electric current, gas or water meter to be installed in the Premises in order to measure the amount of electric current, gas or water consumed for any such excess use. The cost of any such meter and of the installation, maintenance and repair thereof, all charges for such excess water, gas and electric current consumed (as shown by such meters and at the rates then charged by the furnishing public utility); and any additional expense incurred by Landlord in keeping account of electric current, gas, or water so consumed shall be paid by Tenant, and Tenant agrees to pay Landlord therefor promptly upon demand by Landlord.

13. **TAXES**.
    A. As Additional Rent and in accordance with Paragraph 4D of this Lease, Tenant shall pay to Landlord, monthly in advance or as they become due, pursuant to statements submitted by Landlord, Tenant's proportionate share (which pro rata share shall be allocated to the Leased Premises by square footage or other equitable basis, as calculated by Landlord) of all Real Property Taxes relating to the Premises accruing with respect to the Premises during the Term of this Lease and the Extended Term (if any). The term "Real Estate Taxes" shall also include supplemental taxes related to the period of Tenant's Lease Term whenever levied, including any such taxes that may be levied after the Lease Term has expired. In the event the Premises leased hereunder consist of only a portion of the entire tax parcel, Tenant shall pay to Landlord monthly in advance or as they become due, pursuant to statements submitted to Tenant by Landlord, Tenant's proportionate share of such real estate taxes allocated to the Leased Premises by square footage or other reasonable basis as calculated and determined by Landlord. If the tax billing pertains 100% to the Leased Premises, and Landlord chooses to have Tenant pay said real estate taxes directly to the Tax Collector, then in such event it shall be the responsibility of Tenant to obtain the tax and assessments bills and pay, prior to delinquency, the applicable real property taxes and assessments pertaining to the Leased Premises, and failure to receive a bill for taxes and/or assessments shall not provide a basis for cancellation of or non-responsibility for payment of penalties for nonpayment or late payment by Tenant. The term "Real Property Taxes", as used herein, shall mean (i) all taxes, assessments, levies and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all installments of principal and interest required to pay any general or special assessments for public improvements and any increases resulting from reassessments caused by any change in ownership of the Premises) now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against, or with respect to the value, occupancy or use of, all or any portion of the Premises (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed) or Landlord's interest therein; any improvements located within the Premises (regardless of ownership); the fixtures, equipment and other property of Landlord, real or personal, that are an integral part of and located in the Premises; or parking areas, public utilities, or energy within the Premises; (ii) all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the Premises and (iii) all costs and fees (including reasonable attorneys' fees) incurred by Landlord in reasonably contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax. If at any time during the Term of this Lease the taxation or assessment of the Premises prevailing as of the Commencement Date of this Lease shall be altered so that in lieu of or in addition to any Real Property Tax described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (i) on the value, use or occupancy of the Premises or Landlord's interest therein or

(ii) on or measured by the gross receipts, income or rentals from the Premises, on Landlord's business of leasing the Premises, or computed in any manner with respect to the operation of the Premises, then any such tax or charge, however designated, shall be included within the meaning of the term "Real Property Taxes" for purposes of this Lease. If any Real Property Tax is based upon property or rents unrelated to the Premises, then only that part of such Real Property Tax that is fairly allocable to the Premises shall be included within the meaning of the term "Real Property Taxes." Notwithstanding the foregoing, the term "Real Property Taxes" shall not include estate, inheritance, gift or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord's income from all sources.

B. *Taxes on Tenant's Property*. Tenant shall be liable for and shall pay ten days before delinquency, taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based on such increased assessment, which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested by Tenant, Tenant shall within five (5) days after demand, as the case may be, repay to Landlord the taxes so levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment; provided that in any such event Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, to bring suit in any court of competent jurisdiction to recover the amount of such taxes so paid under protest, and any amount so recovered shall belong to Tenant.

14. **ASSESSMENT CREDITS**. The demised property herein may be subject to a special assessment levied by the City of Fremont as part of an Improvement District. As a part of said special assessment proceedings (if any), additional bonds were or may be sold and assessments were or may be levied to provide for construction contingencies and reserve funds. Interest shall be earned on such funds created for contingencies and on reserve funds which will be credited for the benefit of said assessment district. To the extent surpluses are created in said district through unused contingency funds, interest earnings or reserve funds, such surpluses shall be deemed the property of Landlord. Notwithstanding that such surpluses may be credited on assessments otherwise due against the Leased Premises, Tenant shall pay to Landlord, as Additional Rent if, and at the time of any such credit of surpluses, an amount equal to all such surpluses so credited. For example: if (i) the property is subject to an annual assessment of $1,000.00, and (ii) a surplus of $200.00 is credited towards the current year's assessment which reduces the assessment amount shown on the property tax bill from $1,000.00 to $800.00, Tenant shall, upon receipt of notice from Landlord, pay to Landlord said $200.00 credit as Additional Rent.
15. **LIABILITY INSURANCE**. Tenant, at Tenant's expense, agrees to keep in force during the Term of this Lease a policy of commercial general liability insurance with combined single limit coverage of not less than Two Million Dollars ($2,000,000) per occurrence for bodily injury and property damage occurring in, on or about the Premises, including parking and landscaped areas. Such insurance shall be primary and noncontributory as respects any insurance carried by Landlord. The policy or polices effecting such insurance shall name Landlord as additional insureds, and shall insure any liability of Landlord, contingent or otherwise, as respects acts or omissions of Tenant, its agents, employees or invitees or otherwise by any conduct or transactions of any of said persons in or about or concerning the Premises, including any failure of Tenant to observe or perform any of its obligations hereunder; shall be issued by an insurance company admitted to transact business in the State of California; and shall provide that the insurance effected thereby shall not be canceled, except upon thirty (30) days' prior written notice to Landlord. A certificate of insurance of said policy shall be delivered to Landlord. If, during the Term of this Lease, in the considered opinion of Landlord's Lender, insurance advisor, or counsel, the amount of insurance described in this Paragraph 15 is not adequate, Tenant agrees to increase said coverage to such reasonable amount as Landlord's Lender, insurance advisor, or counsel shall deem adequate.
16. **TENANT'S PERSONAL PROPERTY INSURANCE AND WORKMAN'S COMPENSATION INSURANCE**. Tenant shall maintain a policy or policies of fire and property damage insurance in "all risk" form with a sprinkler leakage endorsement insuring the personal property, inventory, trade fixtures, and leasehold improvements within the Leased Premises for the full replacement value thereof. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured.

    Tenant shall also maintain a policy or policies of workman's compensation insurance and any other employee benefit insurance sufficient to comply with all laws.

17. **PROPERTY INSURANCE**. Landlord shall purchase and keep in force, and as Additional Rent and in accordance with Paragraph 4D of this Lease, Tenant shall pay to Landlord (or Landlord's agent if so directed by Landlord) Tenant's proportionate share (allocated to the Leased Premises by square footage or other equitable basis as calculated and determined by Landlord) of the deductibles on insurance claims and the cost of, policy or policies of insurance covering loss or damage to and/or destruction of the Premises (excluding routine maintenance and repairs and incidental damage or destruction caused by accidents or vandalism for which Tenant is responsible under Paragraph 10) in the amount of the full replacement value thereof, providing protection against those perils included within the classification of "all risks" insurance and flood and/or earthquake insurance, if available, plus a policy of rental income insurance in the amount of one hundred (100%) percent of twelve (12) months Basic Rent, plus sums paid as Additional Rent. If such insurance cost is increased due to Tenant's use of the Premises, Tenant agrees to pay to Landlord the full cost of such increase. Tenant shall have no interest in nor any right to the proceeds of any insurance procured by Landlord for the Premises.

    In addition and notwithstanding anything to the contrary in this Paragraph 17, each party to this Lease hereby waives all rights of recovery against the other party or its officer, employees, agents and representatives for loss or damage to its property or the property of others under its control, arising from any cause insured against under the fire and extended coverage (excluding, however, any loss resulting from Hazardous Material contamination of the Property) required to be maintained by the terms of this Lease Agreement to the extent full reimbursement of the loss/claim is received by the insured party. Each party required to carry property insurance hereunder shall cause the policy evidencing such insurance to include a provision permitting such release of liability ("waiver of subrogation endorsement") provided, however, that if the insurance policy of either releasing party prohibits such waiver, then this waiver shall not take effect until consent to such waiver is obtained; provided, however, that if the insurance policy of either releasing party prohibits such waiver, then this waiver shall not take effect until consent to such waiver is obtained. If such waiver is so prohibited, the insured party affected shall promptly notify the other party thereof. In the event the waivers are issued to the parties and are not valid under current policies and/or subsequent insurance policies, the non-complying party will provide, to the other party, 30 days advance notification of the cancellation of the subrogation waiver, in which case neither party will provide such subrogation waiver thereafter and this Paragraph will be null and void. The foregoing waiver of subrogation shall not include any loss resulting from Hazardous Material contamination of the Property or any insurance coverage relating thereto.

18. **INDEMNIFICATION**. Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of any person or damage to or destruction of property in or about the Premises by or from any cause whatsoever, including, without limitation, gas, fire, oil, electricity or leakage of any character from the roof, walls, basement or other portion of the Premises but excluding, however, the willful misconduct or negligence of Landlord, its agents, servants, employees, invitees or contractors of which

negligence Landlord has knowledge and reasonable time to correct. Except as to injury to persons or damage to property to the extent arising from the willful misconduct or the negligence of Landlord, its agents, servants, employees, invitees, or contractors, Tenant shall hold Landlord harmless from and defend Landlord against any and all expenses, including reasonable attorneys' fees, in connection therewith, arising out of any injury to or death of any person or damage to or destruction of property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, accruing and/or occurring during the Term of this Lease.

19. **COMPLIANCE**. Tenant, at its sole cost and expense, shall promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now or hereafter in effect; with the requirements of any board of fire underwriters or other similar body now or hereafter constituted; and with any direction or occupancy certificate issued pursuant to law by any public officer; provided, however, that no such failure shall be deemed a breach of the provisions if Tenant, immediately upon notification, commences to remedy or rectify said failure. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such law, statute, ordinance or governmental rule, regulation, requirement, direction or provision, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall, at its sole cost and expense, comply with any and all requirements pertaining to said Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance covering requirements pertaining to said Premises.
20. **LIENS**. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligation incurred by Tenant. In the event that Tenant shall not, within ten (10) days following notice of the imposition of such lien, cause the same to be released of record, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose, and all expenses incurred by it in connection therewith, shall be payable to Landlord by Tenant on demand with interest at the prime rate of interest as quote by the Bank of America.
21. **ASSIGNMENT AND SUBLETTING**.
    A. Tenant shall not assign, transfer, or hypothecate the leasehold estate under this Lease, or any interest therein, and shall not sublet the Premises, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person or entity to occupy or use the Premises, or any portion thereof, without, in each case, the prior written consent of Landlord which consent will not be unreasonably withheld. As a condition for granting this consent to any assignment, transfer, or subletting, Landlord shall require that (i) the sublease be a **triple net sublease** and that the basic rent due under any such sublease be no less than the then current market rent with annual increases at the then prevailing market rent, (ii) that the sublease shall not provide for subtenant to have an option to extend the term of the sublease or an option to expand the sublet space, and (iii) Tenant pay Landlord monthly throughout the term of any approved sublease, as Additional Rent (and therefore subject to the terms of Paragraph 4.C ("Late Charge") and Paragraph 24 ("Bankruptcy and Default"), all rents and/or additional consideration due Tenant from its assignees, transferees, or subtenants in excess of the Rent payable by Tenant to Landlord hereunder for the assigned, transferred and/or subleased space ("Excess Rent"). Tenant shall, by thirty (30) days written notice, advise Landlord of its intent to assign or transfer Tenant's interest in the Lease or sublet the Premises or any portion thereof for any part of the Term hereof. Within thirty (30) days after receipt of said written notice, Landlord may, in its sole discretion, elect to terminate this Lease as to the portion of the Premises described in Tenant's notice on the date specified in Tenant's notice by giving written notice of such election to terminate. If no such notice to terminate is given to Tenant within said thirty (30) day period, Tenant may proceed to locate an acceptable sublessee, assignee, or other transferee for presentment to Landlord for Landlord's approval, all in accordance with the terms, covenants, and conditions of this Paragraph 21. If Tenant intends to sublet the entire Premises and Landlord elects to terminate this Lease, this Lease shall be terminated on the date specified in Tenant's notice. If, however, this Lease shall terminate pursuant to the foregoing with respect to less than all the Premises, the Rent, as defined and reserved hereinabove shall be adjusted on a pro rata basis to the number of square feet retained by Tenant, and this Lease as so amended shall continue in full force and effect. In the event Tenant is allowed to assign, transfer or sublet the whole or any part of the Premises, with the prior written consent of Landlord, no assignee, transferee or subtenant shall assign or transfer this Lease, either in whole or in part, or sublet the whole or any part of the Premises, without also having obtained the prior written consent of Landlord. A consent of Landlord to one assignment, transfer, hypothecation, subletting, occupation or use by any other person shall not release Tenant from any of Tenant's obligations hereunder or be deemed to be a consent to any subsequent similar or dissimilar assignment, transfer, hypothecation, subletting, occupation or use by any other person. Any such assignment, transfer, hypothecation, subletting, occupation or use without such consent shall be void and shall constitute a breach of this Lease by Tenant and shall, at the option of Landlord exercised by written notice to Tenant, terminate this Lease. The leasehold estate under this Lease shall not, nor shall any interest therein, be assignable for any purpose by operation of law without the written consent of Landlord. As a condition to its consent, Landlord shall require Tenant to pay all expenses in connection with the sublease and/or assignment, and Landlord shall require Tenant's subtenant, assignee or transferee (or other assignees or transferees) to assume in writing all of the obligations under this Lease and for Tenant to remain liable to Landlord under the Lease. Notwithstanding the above, in no event shall Landlord consent to a sub-sublease.
    B. Notwithstanding the foregoing, Landlord and Tenant agree that it shall not be unreasonable for Landlord to refuse to consent to a proposed assignment, sublease or other transfer ("Proposed Transfer") if the Premises or any other portion of the Property would become subject to additional or different Government Requirements as a direct or indirect consequence of the Proposed Transfer and/or the Proposed Transferee's use and occupancy of the Premises and the Property. However, Landlord may, in its sole discretion, consent to such a Proposed Transfer where Landlord is indemnified by Tenant and (i) Subtenant or (ii) Assignee, in form and substance satisfactory to Landlord's counsel, by Tenant and/or Proposed Transferee from and against any and all costs, expenses, obligations and liability arising out of the Proposed Transfer and/or the Proposed Transferee's use and occupancy of the Premises and the Property.
    C. Any and all sublease agreement(s) between Tenant and any and all subtenant(s) (which agreements must be consented to by Landlord, pursuant to the requirements of this Lease) shall contain the following language:

"If Landlord and Tenant jointly and voluntarily elect, for any reason whatsoever, to terminate the Master Lease prior to the scheduled Master Lease termination date, then this Sublease (if then still in effect) shall terminate concurrently with the termination of the Master Lease. Subtenant expressly acknowledges and agrees that (1) the voluntary termination of the Master Lease by Landlord and Tenant and the resulting termination of this Sublease shall not give Subtenant any right or power to make any legal or equitable claim against Landlord, including without limitation any claim for interference with contract or interference with prospective economic advantage, and (2) Subtenant hereby waives any and all rights it may have under law or at equity against Landlord to challenge such an early termination of the Sublease, and unconditionally releases and relieves Landlord, and its officers, directors, employees and agents, from any and all claims, demands, and/or causes of action whatsoever (collectively, "Claims"), whether such matters are known or unknown, latent or apparent, suspected or unsuspected, foreseeable or unforeseeable, which Subtenant may have arising out of or in connection with any such early termination of this Sublease. Subtenant knowingly and intentionally waives any and all protection which is or may be given by Section 1542 of the California Civil Code which provides as follows: "A general release does not extend to claims which the creditor does

not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with debtor.

The term of this Sublease is therefore subject to early termination. Subtenant's initials here below evidence (a) Subtenant's consideration of and agreement to this early termination provision, (b) Subtenant's acknowledgment that, in determining the net benefits to be derived by Subtenant under the terms of this Sublease, Subtenant has anticipated the potential for early termination, and (c) Subtenant's agreement to the general waiver and release of Claims above.

Initials: _________ Initials: _________"

Subtenant Tenant

22. **SUBORDINATION AND MORTGAGES**. In the event Landlord's title or leasehold interest is now or hereafter encumbered by a deed of trust, upon the interest of Landlord in the land and buildings in which the demised Premises are located, to secure a loan from a lender (hereinafter referred to as "Lender") to Landlord, Tenant shall, at the request of Landlord or Lender, execute in writing an agreement (in form reasonably acceptable to Tenant), subordinating its rights under this Lease to the lien of such deed of trust, or, if so requested, agreeing that the lien of Lender's deed of trust shall be or remain subject and subordinate to the rights of Tenant under this Lease. Notwithstanding any such subordination, Tenant's possession under this Lease shall not be disturbed if Tenant is not in default and so long as Tenant shall pay all Rent and observe and perform all of the provisions set forth in this Lease and any subordination agreement shall reflect the agreement of the Lender to the same.
23. **ENTRY BY LANDLORD**. Landlord reserves, and shall at all reasonable times after at least twenty four (24) hours notice (except in emergencies) have the right to enter the Premises to inspect them; to perform any services to be provided by Landlord hereunder; to make repairs or provide any services to a contiguous tenant(s) (if any); to submit the Premises to prospective purchasers, mortgagers or tenants; to post notices of non- responsibility; and to alter, improve or repair the Premises or other parts of the building, all without abatement of Rent, and may erect scaffolding and other necessary structures in or through the Premises where reasonably required by the character of the work to be performed; provided, however that the business of Tenant shall be interfered with to the least extent that is reasonably practical. Any entry to the Premises by Landlord for the purposes provided for herein shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.
24. **BANKRUPTCY AND DEFAULT**. The commencement of a bankruptcy action or liquidation action or reorganization action or insolvency action or an assignment of or by Tenant for the benefit of creditors, or any similar action undertaken by Tenant, or the insolvency of Tenant, shall, at Landlord's option, constitute a breach of this Lease by Tenant. If the trustee or receiver appointed to serve during a bankruptcy, liquidation, reorganization, insolvency or similar action elects to reject Tenant's unexpired Lease, the trustee or receiver shall notify Landlord in writing of its election within thirty (30 days after an order for relief in a liquidation action or within thirty (30) days after the commencement of any action.

    Within thirty (30) days after the court approval of the assumption of this Lease, the trustee or receiver shall cure (or provide adequate assurance to the reasonable satisfaction of Landlord that the trustee or receiver shall cure) any and all previous defaults under the unexpired Lease and shall compensate Landlord for all actual pecuniary loss and shall provide adequate assurance of future performance under said Lease to the reasonable satisfaction of Landlord. Adequate assurance of future performance, as used herein, includes, but shall not be limited to: (i) assurance of source and payment of Rent, and other consideration due under this Lease; (ii) assurance that the assumption or assignment of this Lease will not breach substantially any provision, such as radius, location, use, or exclusivity provision, in any agreement relating to the above described Premises.

    Nothing contained in this section shall affect the existing right of Landlord to refuse to accept an assignment upon commencement of or in connection with a bankruptcy, liquidation, reorganization or insolvency action or an assignment of Tenant for the benefit of creditors or other similar act. Nothing contained in this Lease shall be construed as giving or granting or creating an equity in the demised Premises to Tenant. In no event shall the leasehold estate under this Lease, or any interest therein, be assigned by voluntary or involuntary bankruptcy proceeding without the prior written consent of Landlord. In no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings.

    The failure to perform or honor any covenant, condition or representation made under this Lease shall constitute a default under this Lease by Tenant upon expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of five (5) days from the date of written notice from Landlord within which to cure any default in the payment of Rent or adjustment thereto. Tenant shall have a period of thirty (30) days from the date of written notice from Landlord within which to cure any other non-monetary default under this Lease; provided, however, that with respect to non-monetary defaults not involving Tenant's failure to pay Basic Rent or Additional Rent, Tenant shall not be in default if (i) more than thirty (30) days is required to cure such non-monetary default and (ii) Tenant commences cure of such default as soon as reasonably practicable after receiving written notice of such default from Landlord and thereafter continuously and with due diligence prosecutes such cure to completion. Upon an uncured default of this Lease by Tenant, Landlord shall have the following rights and remedies in addition to any other rights or remedies available to Landlord at law or in equity:

    a. The rights and remedies provided for by California Civil Code Section 1951.2 including but not limited to, recovery of the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of said Section 1951.2. Any proof by Tenant under subparagraphs (2) and (3) of Section 1951.2 of the California Civil Code of the amount of rental loss that could be reasonably avoided shall be made in the following manner: Landlord and Tenant shall each select a licensed real estate broker in the business of renting property of the same type and use as the Premises and in the same geographic vicinity. Such two real estate brokers shall select a third licensed real estate broker, and the three licensed real estate brokers so selected shall determine the amount of the Rent loss that could be reasonably avoided from the balance of the Term of this Lease after the time of award. The decision of the majority of said licensed real estate brokers shall be final and binding upon the parties hereto.

b. The rights and remedies provided by California Civil Code Section which allows Landlord to continue the Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession; acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession.
c. The right to recover that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired Term of this Lease.
d. The right to terminate this Lease by giving notice to Tenant in accordance with applicable law.
e. To the extent permitted by law, the right and power to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply such proceeds therefrom pursuant to applicable California law. Landlord may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term of this Lease) and at such Rent and such other terms as Landlord in its reasonable sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each subletting, (i) Tenant shall be immediately liable to pay Landlord, in addition to indebtedness other than Rent due hereunder, the reasonable cost of such subletting, including, but not limited to, reasonable attorneys' fees, and any real estate commissions actually paid, and the cost of such reasonable alterations and repairs incurred by Landlord and the amount, if any, by which the Rent hereunder for the period of such subletting (to the extent such period does not exceed the Term hereof) exceeds the amount to be paid as Rent for the Premises for such period or (ii) at the option of Landlord, rents received from such subletting shall be applied first to payment of indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such subletting and of such alterations and repairs; third, to payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same becomes due hereunder. If Tenant has been credited with any Rent to be received by such subletting under option (i) and such Rent shall not be promptly paid to Landlord by the subtenant(s), or if such rentals received from such subletting under option (ii) during any month be less than that to be paid during the month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time hereafter elect to terminate this Lease for such previous breach.
f. The right to have a receiver appointed for Tenant upon application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord pursuant to subparagraph (e) above.

25. **ABANDONMENT**. Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease and if Tenant shall abandon, vacate or surrender said Premises, or be dispossessed by the process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be mortgaged to Landlord. Notwithstanding the above, Tenant shall not be in default under the Lease if it leaves all or any part of Premises vacant so long as (i) Tenant is performing all of its other obligations under the Lease including the obligation to pay Rent (ii) Tenant provides on-site security during normal business hours for those parts of the Premises left vacant, (iii) such vacancy does not materially and adversely affect the validity or coverage of any policy of insurance carried by Landlord with respect to the Premises, and (iv) the utilities and heating and ventilation systems are operated and maintained to the extent necessary to prevent damage to the Premises or its systems.
26. **DESTRUCTION**. In the event the Premises are destroyed in whole or in part from any cause, except for routine maintenance and repairs and incidental damage and destruction caused from vandalism and accidents for which Tenant is responsible under Paragraph 10, Landlord may, at its option:

    (a) Rebuild or restore the Premises to their condition prior to the damage or destruction, or

    (b) Terminate this Lease (providing that the Premises is damaged to the extent of 33 1/3% or more of the replacement cost, exclusive of footings, foundations and floor slabs).

    If Landlord does not give Tenant notice in writing within thirty (30) days from the destruction of the Premises of its election to either rebuild and restore them, or to terminate this Lease, Landlord shall be deemed to have elected to rebuild or restore them, in which event Landlord agrees, at its expense except for any deductible, which is the responsibility of the Tenant, promptly to rebuild or restore the Premises to their condition prior to the damage or destruction. Tenant shall be entitled to a reduction in Rent from the date of such damage or destruction, provided Tenant is not using any portion of such damaged area, while such repair is being made in the proportion that the area of the Premises rendered untenantable by such damage bears to the total area of the Premises. If Landlord initially estimates that the rebuilding or restoration will exceed 180 days or if Landlord does not complete the rebuilding or restoration within one hundred eighty (180) days following the date of destruction (such period of time to be extended for delays caused by the fault or neglect of Tenant or because of Acts of God, acts of public agencies, labor disputes, strikes, fires, freight embargos, rainy or stormy weather, inability to obtain materials, supplies or fuels, acts of contractors or subcontractors, or delay of the contractors or subcontractors due to such causes or other contingencies beyond the control of Landlord), then Tenant shall have the right to terminate this Lease by giving written notice to Landlord within five days following the date Tenant receives Landlord's written notice stating that the restoration will exceed 180 days. Regardless of whether Landlord and/or Tenant elects to terminate the Lease early as provided herein, Tenant shall remain liable for the insurance deductible as it relates to the Leased Premises. Notwithstanding anything herein to the contrary, Landlord's obligation to rebuild or restore shall be limited to the building and interior improvements constructed by Landlord as they existed as of the Commencement Date of the Lease and shall not include restoration of Tenant's trade fixtures, equipment, merchandise, or any improvements, alterations or additions made by Tenant to the Premises, which Tenant shall forthwith replace or fully repair at Tenant's sole cost and expense provided this Lease is not canceled according to the provisions above.

    Unless this Lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect. Tenant hereby expressly waives the provision of Section 1932, Subdivision 2, in Section 1933, Subdivision 4 of the California Civil Code.

    In any event that the building in which the Premises are situated is damaged or destroyed to the extent of not less than 33 1/3% of the replacement cost thereof, Landlord may elect to terminate this Lease, whether the Premises be injured or not. Notwithstanding anything to the contrary herein, Landlord may terminate this lease in the event of an uninsured event or if insurance proceeds are insufficient to cover one hundred percent of the rebuilding costs net of the deductible.

27. **EMINENT DOMAIN**. If all or any part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the date when

title vests in the condemnor, and Landlord shall be entitled to any and all payment, income, rent, award, or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance, and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired Term of this Lease. Notwithstanding the foregoing sentence, any compensation specifically awarded Tenant for loss of business, Tenant's personal property, moving costs or loss of goodwill, shall be and remain the property of Tenant.

If any action or proceeding is commenced for such taking of the Premises or any part thereof, or if Landlord is advised in writing by any entity or body having the right or power of condemnation of its intention to condemn the Premises or any part thereof, then Landlord shall have the right to terminate this Lease by giving Tenant written notice thereof within sixty (60) days of the date of receipt of said written advice, or commencement of said action or proceeding, or taking conveyance, which termination shall take place as of the first to occur of the last day of the calendar month next following the month in which such notice is given or the date on which title to the Premises shall vest in the condemnor.

In the event of such a partial taking or conveyance of the Premises, if the portion of the Premises taken or conveyed is so substantial that the Tenant can no longer reasonably conduct its business, Tenant shall have the privilege of terminating this Lease within sixty (60) days from the date of such taking or conveyance, upon written notice to the Landlord of its intention so to do, and upon giving of such notice this Lease shall terminate on the last day of the calendar month next following the month in which such notice is given, upon payment by Tenant of the Rent from the date of such taking or conveyance to the date of termination.

If a portion of the Premises be taken by condemnation or conveyance in lieu thereof and neither Landlord nor Tenant shall terminate this Lease as provided herein, this Lease shall continue in full force and effect as to the part of the Premises not so taken or conveyed, and the Rent herein shall be apportioned as of the date of such taking or conveyance so that thereafter the Rent to be paid by Tenant shall be in the ratio that the area of the portion of the Premises not so taken or conveyed bears to the total area of the Premises prior to such taking.

28. **SALE OR CONVEYANCE BY LANDLORD**. In the event of a sale or conveyance of the Premises or any interest therein, by any owner of the reversion then constituting Landlord, the transferor shall thereby be released from any further liability upon any of the terms, covenants or conditions (express or implied) herein contained in favor of Tenant, and in such event, insofar as such transfer is concerned, Tenant agrees to look solely to the responsibility of the successor in interest of such transferor in and to the Premises and this Lease. This Lease shall not be affected by any such sale or conveyance, and Tenant agrees to attorn to the successor in interest of such transferor.
29. **ATTORNMENT TO LENDER OR THIRD PARTY**. In the event the interest of Landlord in the land and buildings in which the Leased Premises are located (whether such interest of Landlord is a fee title interest or a leasehold interest) is encumbered by deed of trust, and such interest is acquired by the lender or any third party through judicial foreclosure or by exercise of a power of sale at private trustee's foreclosure sale, Tenant hereby agrees to attorn to the purchaser at any such judicial foreclosure or foreclosure sale and to recognize such purchaser as the Landlord under this Lease. In the event the lien of the deed of trust securing the loan from a Lender to Landlord is prior and paramount to the Lease, this Lease shall nonetheless continue in full force and effect for the remainder of the unexpired Term hereof, at the same rental herein reserved and upon all the other terms, conditions and covenants herein contained.
30. **HOLDING OVER**. Any holding over by Tenant after expiration or other termination of the Term of this Lease with the written consent of Landlord delivered to Tenant shall not constitute a renewal or extension of the Lease or give Tenant any rights in or to the Leased Premises except as expressly provided in this Lease. Any holding over after the expiration or other termination of the Term of this Lease, with the consent of Landlord, shall be construed to be a tenancy from month to month, on the same terms and conditions herein specified insofar as applicable except that the monthly Basic Rent shall be increased to an amount equal to two hundred (200%) percent of the monthly Basic Rent required during the last month of the Lease term; provided, however, that the monthly Rent shall be prorated based on the actual number of days in the month for any partial month of the holding over.
31. **CERTIFICATE OF ESTOPPEL**. Tenant shall at any time within ten (10) days of receipt of notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord; that there are no uncured defaults in Landlord's performance, and that not more than one month's Rent has been paid in advance.
32. **CONSTRUCTION CHANGES**. It is understood that the description of the Premises and the location of ductwork, plumbing and other facilities therein are subject to such minor changes as Landlord or Landlord's architect determines to be desirable in the course of construction of the Premises, and no such changes shall affect this Lease or entitle Tenant to any reduction of Rent hereunder or result in any liability of Landlord to Tenant. Landlord does not guarantee the accuracy of any drawings supplied to Tenant and verification of the accuracy of such drawings rests with Tenant.
33. **RIGHT OF LANDLORD TO PERFORM**. All terms, covenants and conditions of this Lease to be performed or observed by Tenant shall be performed or observed by Tenant at Tenant's sole cost and expense and without any reduction of rent. If Tenant shall fail to pay any sum of money, or other Rent, required to be paid by it hereunder and such failure shall continue for five (5) days after written notice thereof by Landlord or shall fail to perform any other term of covenant hereunder on its part to be performed, and such failure shall continue for thirty (30) days after written notice thereof by Landlord (or such longer grace period as shall be provided under Paragraph 24), Landlord, without waiving or releasing Tenant from any obligation of Tenant hereunder, may, but shall not be obliged to, make any such payment or perform any such other term or covenant on Tenant's part to be performed. All sums so paid by Landlord and all necessary costs of such performance by Landlord together with interest thereon at the rate of the prime rate of interest per annum as quoted by the Bank of America from the date of such payment or performance by Landlord, shall be paid (and Tenant covenants to make such payment) to Landlord within five (5) business days after demand by Landlord, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of nonpayment by Tenant as in the case of failure by Tenant in the payment of Rent hereunder.

34. **ATTORNEYS' FEES**.
    A. In the event that Landlord should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease, or for any other relief against Tenant hereunder, then all costs and expenses, including reasonable attorneys' fees, incurred by Landlord therein shall be paid by Tenant, which obligation on the part of Tenant shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

B. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including reasonable attorney's fees.

35. **WAIVER**. The waiver by either party of the other party's failure to perform or observe any term, covenant or condition herein contained to be performed or observed by such waiving party shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of the party failing to perform or observe the same or any other such term, covenant or condition therein contained, and no custom or practice which may develop between the parties hereto during the Term hereof shall be deemed a waiver of, or in any way affect, the right of either party to insist upon performance and observance by the other party in strict accordance with the terms hereof.
36. **NOTICES**. All notices, demands, requests, advices or designations which may be or are required to be given by either party to the other hereunder shall be in writing. All notices, demands, requests, advices or designations by Landlord to Tenant shall be sufficiently given, made or delivered if personally served on Tenant by leaving the same at the Premises or if sent by United States certified or registered mail, postage prepaid or by a reputable same day or overnight courier service addressed to Tenant at: **34801 CAMPUS DRIVE, FREMONT, CA 94555**. All notices, demands, requests, advices or designations by Tenant to Landlord shall be sent by United States certified or registered mail, postage prepaid, addressed to Landlord at its offices at: **PEERY/ARRILLAGA, 2560 MISSION COLLEGE BLVD., SUITE 101, SANTA CLARA, CA 95054**. Each notice, request, demand, advice or designation referred to in this Paragraph shall be deemed received on the date of the personal service or receipt or refusal to accept receipt of the mailing thereof in the manner herein provided, as the case may be. Either party shall have the right, upon ten (10) days written notice to the other, to change the address as noted herein; however, Landlord shall send Tenant notices to only one address .
37. **EXAMINATION OF LEASE**. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for a lease, and this instrument is not effective as a lease or otherwise until its execution and delivery by both Landlord and Tenant.
38. **DEFAULT BY LANDLORD**. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event earlier than (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have heretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.
39. **CORPORATE AUTHORITY**. If Tenant is a corporation (or a partnership), each individual executing this Lease on behalf of said corporation (or partnership) represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation (or partnership) in accordance with the by-laws of said corporation (or partnership in accordance with the partnership agreement) and that this Lease is binding upon said corporation (or partnership) in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of the resolution of the Board of Directors of said corporation authorizing or ratifying the specific execution of this Lease by the individual executing said Lease. In lieu of said corporate resolution, Tenant may provide Landlord with an outside legal opinion stating that the party executing this Lease on behalf of Tenant is authorized to do so by the Board of Directors.

40. **LIMITATION OF LIABILITY**. In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord:

    (a) the sole and exclusive remedy shall be against Landlord's interest in the Premises leased herein;

    (b) no partner of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the partnership);

    (c) no service of process shall be made against any partner of Landlord (except as may be necessary to secure jurisdiction of the partnership);

    (d) no partner of Landlord shall be required to answer or otherwise plead to any service of process;

    (e) no judgment will be taken against any partner of Landlord;

    (f) any judgment taken against any partner of Landlord may be vacated and set aside at any time without hearing;

    (g) no writ of execution will ever be levied against the assets of any partner of Landlord;

    (h) these covenants and agreements are enforceable both by Landlord and also by any partner of Landlord.

    Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by statute or at common law.

41. **SIGNS**. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside of the Building or any exterior windows of the Building without the written consent of Landlord first had and obtained and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to Tenant and at the expense of Tenant. If Tenant is allowed to print or affix or in any way place a sign in, on, or about the Premises, upon expiration or other sooner termination of this Lease, Tenant at Tenant's sole cost and expense shall both remove such sign and repair all damage in such a manner as to restore all aspects of the appearance of the Premises to the condition prior to the placement of said sign.

    All approved signs or lettering on outside shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved of by Landlord.

    Tenant shall not place anything or allow anything to be placed near the glass of any window, door partition or wall which may appear unsightly from outside the Premises.

42. **CONSENT**. Whenever the consent of one party to the other is required hereunder, such consent shall not be unreasonably withheld.
43. **AUTHORITY TO EXECUTE**. The parties executing this Lease Agreement hereby warrant and represent that they are properly authorized to execute this Lease Agreement and bind the parties on behalf of whom they execute this Lease Agreement and to all of the terms, covenants and conditions of this Lease Agreement as they relate to the respective parties hereto.

44. **<u>HAZARDOUS MATERIALS</u>**. Landlord and Tenant agree as follows with respect to the existence or use of "Hazardous Materials" (as defined herein) on, in, under or about the Premises and real property located beneath said Premises and the Common Areas of the Parcel, which includes the entire parcel of land on which the Premises are located as shown in Green on <u>Exhibit A</u> attached hereto (hereinafter collectively referred to as the "Property"):

A. As used herein, the term "Hazardous Materials" shall mean any material, waste, chemical, mixture or byproduct which is or hereafter is defined, listed or designated under Environmental Laws (defined below) as a pollutant, or as a contaminant, or as a toxic or hazardous substance, waste or material, or any other unwholesome, hazardous, toxic, biohazardous, or radioactive material, waste, chemical, mixture or byproduct, or which is listed, regulated or restricted by any Environmental Law (including, without limitation, petroleum hydrocarbons or any distillates or derivatives or fractions thereof, polychlorinated biphenyls, or asbestos). As used herein, the term "Environmental Laws" shall mean any applicable Federal, State of California or local government law (including common law), statute, regulation, rule, ordinance, permit, license, order, requirement, agreement, or approval, or any determination, judgment, directive, or order of any executive or judicial authority at any level of Federal, State of California or local government (whether now existing or subsequently adopted or promulgated) relating to pollution or the protection of the environment, ecology, natural resources, or public health and safety.

B. Tenant shall obtain Landlord's written consent, which may be withheld in Landlord's discretion, prior to the occurrence of any Tenant's Hazardous Materials Activities (defined below); provided, however, that Landlord's consent shall not be required for normal use in compliance with applicable Environmental Laws of customary household and office supplies (Tenant shall first provide Landlord with a list of said materials use), such as mild cleaners, lubricants and copier toner. As used herein, the term "Tenant's Hazardous Materials Activities" shall mean any and all use, handling, generation, storage, disposal, treatment, transportation, release, discharge, or emission of any Hazardous Materials on, in, beneath, to, from, at or about the Property, in connection with Tenant's use of the Property, or by Tenant or by any of Tenant's agents, employees, contractors, vendors, invitees, visitors or its future subtenants or assignees. Tenant agrees that any and all Tenant's Hazardous Materials Activities shall be conducted in strict, full compliance with applicable Environmental Laws at Tenant's expense, and shall not result in any contamination of the Property or the environment. Tenant shall not discharge any Hazardous Materials in the plumbing, sewer and/or storm drains in the Premises and/or Parcel. Tenant agrees to provide Landlord with prompt written notice of any spill or release of Hazardous Materials at the Property during the term of the Lease of which Tenant becomes aware, and further agrees to provide Landlord with prompt written notice of any violation of Environmental Laws in connection with Tenant's Hazardous Materials Activities of which Tenant becomes aware. If Tenant's Hazardous Materials Activities involve Hazardous Materials other than normal use of customary household and office supplies, Tenant also agrees at Tenant's expense: (i) to install such Hazardous Materials monitoring, storage and containment devices as Landlord reasonably deems necessary (Landlord shall have no obligation to evaluate the need for any such installation or to require any such installation); (ii) provide Landlord with a written inventory of such Hazardous Materials, including an update of same each year upon the anniversary date of the Commencement Date of the Lease ("Anniversary Date"); and (iii) on each Anniversary Date, to retain a qualified environmental consultant, acceptable to Landlord, to evaluate whether Tenant is in compliance with all applicable Environmental Laws with respect to Tenant's Hazardous Materials Activities. Tenant, at its expense, shall submit to Landlord a report from such environmental consultant which discusses the environmental consultant's findings within two (2) months of each Anniversary Date. Tenant, at its expense, shall promptly undertake and complete any and all steps necessary, and in full compliance with applicable Environmental Laws, to fully correct any and all problems or deficiencies identified by the environmental consultant, and promptly provide Landlord with documentation of all such corrections.

C. Prior to termination or expiration of the Lease, Tenant, at its expense, shall (i) properly remove from the Property all Hazardous Materials which come to be located at the Property in connection with Tenant's Hazardous Materials Activities, and (ii) fully comply with and complete all facility closure requirements of applicable Environmental Laws regarding Tenant's Hazardous Materials Activities, including but not limited to (x) properly restoring and repairing the Property to the extent damaged by such closure activities, and (y) obtaining from the local Fire Department or other appropriate governmental authority with jurisdiction a written concurrence that closure has been completed in compliance with applicable Environmental Laws. Tenant shall promptly provide Landlord with copies of any claims, notices, work plans, data and reports prepared, received or submitted in connection with any such closure activities.

D. If Landlord, in its sole discretion, believes that the Property has become contaminated as a result of Tenant's Hazardous Materials Activities, Landlord in addition to any other rights it may have under this Lease or under Environmental Laws or other laws, may enter upon the Property and conduct inspection, sampling and analysis, including but not limited to obtaining and analyzing samples of soil and groundwater, for the purpose of determining the nature and extent of such contamination. Tenant shall promptly reimburse Landlord for the costs of such an investigation, including but not limited to reasonable attorneys' fees Landlord incurs with respect to such investigation, that discloses Hazardous Materials contamination for which Tenant is liable under this Lease. Notwithstanding the above, Landlord may, at its option and in its sole and absolute discretion, choose to perform remediation and obtain reimbursement for cleanup costs as set forth herein from Tenant. Any cleanup costs incurred by Landlord as the result of Tenant's Hazardous Materials Activities shall be reimbursed by Tenant within thirty (30) days of presentation of written documentation of the expense to Tenant by Landlord. Such reimbursable costs shall include, but not be limited to, any reasonable consultant and attorney fees incurred by Landlord. Tenant shall take all actions necessary to preserve any claims it has against third parties, including, but not limited to, its insurers, for claims related to its operation, management of Hazardous Materials or contamination of the Property. Except as may be required of Tenant by applicable Environmental Laws, Tenant shall not perform any sampling, testing, or drilling to identify the presence of any Hazardous Materials at the Property, without Landlord's prior written consent which may be withheld in Landlord's discretion. Tenant shall promptly provide Landlord with copies of any claims, notices, work plans, data and reports prepared, received or submitted in connection with any sampling, testing or drilling performed pursuant to the preceding sentence.

E. Tenant shall indemnify, defend (with legal counsel acceptable to Landlord, whose consent shall not unreasonably be withheld) and hold harmless Landlord, its employees, assigns, successors, successors-in-interest, agents and representatives from and against any and all claims (including but not limited to third party claims from a private party or a government authority), liabilities, obligations, losses, causes of action, demands, governmental proceedings or directives, fines, penalties, expenses, costs (including but not limited to reasonable attorneys', consultants' and other experts' fees and costs), and damages, which arise from or relate to: (i) Tenant's Hazardous Materials Activities; (ii) any Hazardous Materials contamination caused by Tenant prior to the Commencement Date of the Lease; or (iii) the breach of any obligation of Tenant under this Paragraph 44 (collectively, "Tenant's Environmental Indemnification"). Tenant's Environmental Indemnification shall include but is not limited to the obligation to promptly and fully reimburse Landlord for losses in or reductions to rental income, and diminution in fair market value of the Property. Tenant's Environmental Indemnification shall further include but is not limited to the obligation to diligently and properly implement to completion, at Tenant's expense, any and all environmental investigation, removal, remediation, monitoring, reporting, closure activities, or other environmental response action (collectively, "Response Actions"). Tenant shall promptly provide Landlord with copies of any claims, notices, work plans, data and reports prepared, received or submitted in connection with any Response Actions.

As evidenced by their initials set forth immediately below, Tenant acknowledges that Landlord has provided Tenant with copies of the environmental reports listed on Exhibit C ("Reports"), and Tenant acknowledges that Tenant and Tenant's experts (if any) have had ample opportunity to review such reports and that Tenant has satisfied itself as to the environmental conditions of the Property and the suitability of such conditions for Tenant's intended use of the Property. To the best of Landlord's knowledge as of the date of this Lease, except as noted in said Reports, no additional on site Hazardous Materials contamination exist on the Property; however, Landlord shall have no obligation to further investigate.

Initial: ____________ Initial: _____________

Tenant Landlord

It is agreed that the Tenant's responsibilities related to Hazardous Materials will survive the expiration or termination of this Lease and that Landlord may obtain specific performance of Tenant's responsibilities under this Paragraph 44.

45. **BROKERS**. Tenant represents and warrants that it has not dealt with any real estate brokers, agents, or finders in connection with the original Term of this Lease, and knows of no real estate broker, agent or finder who is entitled to a commission in connection with this Lease, except as follows: Randy Scott of Cornish & Carey Oncor International ("Cornish & Carey"), whose commission shall be paid by Landlord in accordance with Landlord's standard commission policy and schedule ("Lease Commission"). Tenant agrees to defend, protect, indemnify and hold Landlord harmless from and against all claims for brokerage commissions, finder's fees, and other compensation made by any other broker, agent, or finder as consequence of the Tenant's actions or dealings with such other broker, agent or finder. The parties hereto acknowledge that Landlord will not pay an additional Lease Commission to Randy Scott, Cornish & Carey or to any broker in the event the original Term of this Lease is extended or the square footage leased hereunder is increased for any reason whatsoever.

    In the event this Lease is terminated early, for any reason whatsoever (excluding, however a termination resulting from Paragraphs 26 ("Destruction") or 27 ("Eminent Domain"), Tenant agrees to reimburse Landlord for one hundred percent (100%) of the balance of the unamortized Lease Commission previously paid by Landlord, that is outstanding as of the early Lease Termination Date. Said amount shall be paid by Tenant to Landlord by the Lease Termination Date, and/or Landlord may, at its option, deduct part or all of said unamortized Lease Commission from Tenant's Security Deposit.

46. **ASSOCIATION DUES**: The Premises leased hereunder is part of the Ardenwood Property Owner's Association (the "Association"), and is subject to Association Dues to fund the cost of the Association's obligations and expenses as authorized under said Agreement. As of the date of this Lease, Tenant's current prorata share of the Association Dues is currently estimated at $9.89 per month and is subject to adjustment as provided for by said Association. Said Association Dues are payable by Tenant to Landlord as Additional Rent on a monthly basis throughout the Term of this Lease. Tenant understands that it will not be a direct member of the Association.

47. **MISCELLANEOUS AND GENERAL PROVISIONS**.
    A. *Use of Building Name*. Tenant shall not, without the written consent of Landlord, use the name of the building for any purpose other than as the address of the business conducted by Tenant in the Premises.
    B. *Choice of Law; Severability*. This Lease shall in all respects be governed by and construed in accordance with the laws of the State of California. If any provision of this Lease shall be invalid, unenforceable or ineffective for any reason whatsoever, all other provisions hereof shall be and remain in full force and effect.
    C. *Definition of Terms*. The term "Premises" includes the space leased hereby and any improvements now or hereafter installed therein or attached thereto. The term "Landlord" or any pronoun used in place thereof includes the plural as well as the singular and the successors and assigns of Landlord. The term "Tenant" or any pronoun used in place thereof includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations, and their and each of their respective heirs, executors, administrators, successors and permitted assigns, according to the context hereof, and the provisions of this Lease shall inure to the benefit of and bind such heirs, executors, administrators, successors and permitted assigns.

       The term "person" includes the plural as well as the singular and individuals, firms, associations, partnerships and corporations. Words used in any gender include other genders. If there be more than one Tenant the obligations of Tenant hereunder are joint and several. The paragraph headings of this Lease are for convenience of reference only and shall have no effect upon the construction or interpretation of any provisions hereof.
    D. *Time Of Essence*. Time is of the essence of this Lease and of each and all of its provisions.
    E. *Quitclaim*. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company, licensed to operate in the State of California, to remove the cloud or encumbrance created by this Lease from the real property of which Tenant's Premises are a part.
    F. *Incorporation of Prior Agreements; Amendments*. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this agreement.
    G. *Recording*. Neither Landlord nor Tenant shall record this Lease or a short form memorandum hereof without the consent of the other.
    H. *Amendments for Financing*. Tenant further agrees to execute any reasonable amendments required by a lender to enable Landlord to obtain financing, so long as Tenant's rights hereunder are not substantially affected.
    I. *Clauses, Plats and Riders*. Clauses, plats and riders, if any, signed by Landlord and Tenant and endorsed on or affixed to this Lease are a part hereof.

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J. *Diminution of Light, Air or View*. Tenant covenants and agrees that no diminution or shutting off of light, air or view by any structure which may be hereafter erected (whether or not by Landlord) shall in any way affect this Lease, entitle Tenant to any reduction of Rent hereunder or result in any liability of Landlord to Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease as of the day and year last written below.

LANDLORD:
JOHN ARRILLAGA SURVIVOR'S TRUST

By ______________________________________
John Arrillaga, Trustee

Date ______________________________________

TENANT:
PROTEIN DESIGN LABS, INC.
a Delaware corporation

By ______________________________________
Douglass O. Ebersole, Senior Vice President, Legal and Licensing

Date ______________________________________

RICHARD T. PEERY SEPARATE PROPERTY TRUST

By ______________________________________
Richard T. Peery, Trustee

Date: ______________________________