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 March 31, 2008

OR

o Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number: 0-19756

PDL BIOPHARMA, 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)

1400 Seaport Boulevard
Redwood City, CA 94063
(Address of principal executive offices and Zip Code)

(650) 454-1000
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer x	Accelerated filer o
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

As of May 6, 2008, there were 119,308,001 shares of the Registrant's Common Stock outstanding.

PDL BIOPHARMA, INC.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)
(in thousands, except per share data)

	Three Months Ended March 31,	
	2008	2007
Revenues:		
Royalties	$ 49,955	$ 48,595
License, collaboration and other	7,374	10,261
Total revenues	57,329	58,856
Costs and expenses:		
Research and development	47,681	48,091
General and administrative	20,443	11,994
Restructuring charges	5,629	—
Asset impairment charges	3,521	—
Gain on sale of assets	(49,671)	—
Total costs and expenses	27,603	60,085
Operating income (loss)	29,726	(1,229)
Interest income and other, net	4,867	5,032
Interest expense	(3,989)	(3,557)
Income from continuing operations before income taxes	30,604	246
Income tax expense	1,004	30
Income from continuing operations	29,600	216
Loss from discontinued operations, net of income tax expense of $28,027 and $35 for the quarters ended March 31, 2008 and 2007, respectively	(91,475)	(10,822)
Net loss	$ (61,875)	$ (10,606)
Income (loss) per basic share		
Continuing operations	$ 0.25	$ 0.00
Discontinued operations	(0.78)	(0.09)
Net loss per basic share	$ (0.53)	$ (0.09)
Income (loss) per diluted share		
Continuing operations	$ 0.23	$ 0.00

Discontinued operations	(0.65)	(0.09)
Net loss per diluted share	$ (0.42)	$ (0.09)
Shares used to compute income (loss) per basic and diluted share		
Shares used to compute basic income (loss) per share	117,525	115,104
Shares used to compute diluted income (loss) per share	141,232	117,765

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except per share data)

	March 31, 2008 (unaudited)	December 31, 2007 (Note 1)
Assets		
Current assets:		
Cash and cash equivalents	**$ 905,661**	$ 340,634
Restricted cash	**15,005**	25,005
Marketable securities	**22,973**	71,880
Accounts receivable, net of allowances of $2.9 million and $17.7 million at March 31, 2008 and December 31, 2007, respectively	**5,846**	5,163
Assets held for sale	**—**	269,390
Prepaid and other current assets	**12,339**	8,362
Total current assets	**961,824**	720,434
Long-term restricted cash	**3,269**	3,269
Land, property and equipment, net	**134,550**	330,746
Goodwill	**—**	81,724
Other intangible assets, net	**8,644**	9,056
Deferred tax asset	**—**	38,319
Other assets	**9,327**	8,644
Total assets	**$ 1,117,614**	$ 1,192,192
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	**$ 3,078**	$ 8,893
Accrued compensation	**17,488**	27,222
Royalties payable	**9,114**	5,967
Other accrued liabilities	**40,721**	33,838
Deferred revenue	**8,197**	7,171
Deferred tax liability	**—**	38,319
Current portion of other long-term debt	**735**	678
Total current liabilities	**79,333**	122,088
Convertible notes	**499,998**	499,998
Long-term deferred revenue	**27,813**	27,647
Other long-term liabilities	**31,847**	34,849
Total liabilities	**638,991**	684,582
Stockholders' equity:		
Common stock, par value $0.01 per share, 250,000 shares authorized; 118,065 and 117,577 shares issued and outstanding at March 31, 2008 and December 31, 2007, respectively	**1,181**	1,176
Additional paid-in capital	**1,131,033**	1,098,251
Accumulated deficit	**(653,220)**	(591,345)
Accumulated other comprehensive loss	**(371)**	(472)
Total stockholders' equity	**478,623**	507,610
Total liabilities and stockholders' equity	**$ 1,117,614**	$ 1,192,192

See accompanying notes.

PDL BIOPHARMA, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(in thousands)

	Three Months Ended March 31,	
	2008	2007
Cash flows from operating activities:		

Net loss	$ (61,875)	$ (10,606)
Adjustments to reconcile net loss to net cash used in operating activities:		
Asset impairment charges	3,521	—
Depreciation	8,001	7,377
Amortization of convertible notes offering costs	586	585
Amortization of intangible assets	412	8,783
Loss on sale of assets, net	14,897	—
Stock-based compensation expense	6,149	5,239
Loss on disposal of equipment	127	31
Tax benefit from employee stock options	21,673	—
Excess tax benefit from stock-based compensation	(21,597)	—
Changes in assets and liabilities:		
Accounts receivable, net	11,355	4,442
Interest receivable	(544)	(868)
Inventories	—	(817)
Other current assets	(6,466)	(3,628)
Other assets	566	(347)
Accounts payable	(5,815)	(8,095)
Accrued liabilities	(421)	(9,841)
Other long term liabilities	743	85
Deferred revenue	(643)	(1,456)
Total adjustments	32,544	1,490
Net cash used in operating activities	(29,331)	(9,116)
Cash flows from investing activities:		
Purchases of marketable securities	(303)	(19,434)
Maturities of marketable securities	49,836	16,047
Net proceeds from the sale of the commercial and cardiovascular assets	272,945	—
Net proceeds from the sale of the manufacturing assets	236,560	—
Purchase of property and equipment	(1,073)	(16,768)
Transfer out of (into) restricted cash	10,000	(10,005)
Net cash provided by (used in) investing activities	567,965	(30,160)
Cash flows from financing activities:		
Proceeds from issuance of common stock	4,965	4,019
Payments on other long-term debt	(169)	(1,208)
Excess tax benefit from stock-based compensation	21,597	—
Net cash provided by financing activities	26,393	2,811
Net increase (decrease) in cash and cash equivalents	565,027	(36,465)
Cash and cash equivalents at beginning of the period	340,634	179,009
Cash and cash equivalents at end the period	$ 905,661	$ 142,544

See accompanying notes.

PDL BIOPHARMA, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
March 31, 2008
(unaudited)

1. Summary of Significant Accounting Policies

Organization and Business

We are a biotechnology company focused on the discovery and development of novel antibodies in oncology and immunologic diseases. We receive royalties and other revenues through licensing agreements with biotechnology and pharmaceutical companies based on our proprietary antibody humanization technology platform. The technology subject to these licensing agreements has contributed to the development by our licensees of 10 marketed products. Our research platform is focused on the discovery of novel antibodies for the treatment of cancer and immunologic diseases. We currently have several investigational compounds in clinical development for oncology or immunologic diseases, two of which we are developing in collaboration with Biogen Idec MA, Inc. (Biogen Idec). We began marketing and selling acute-care products in the hospital setting in the United States, Canada and other international markets in March 2005 in connection with our acquisitions of ESP Pharma, Inc. and the rights to *Retavase*®. In March 2008, we sold the rights to our *Cardene*®, *Retavase* and IV *Busulfex*® commercial products and our ularitide development-stage cardiovascular product (together, the Commercial and Cardiovascular Assets). The results of the Commercial and Cardiovascular Operations segment, which operations are comprised of those related to the Commercial and Cardiovascular Assets, are presented as discontinued operations. Discontinued operations are reported as a component within the Consolidated Statement of Operations separate from income from continuing operations. For details of such amounts, see Note 5.

Basis of Presentation and Responsibility for Quarterly Financial Statements

The accompanying condensed consolidated financial statements are unaudited, but include all adjustments (consisting only of normal, recurring adjustments) that we consider necessary for a fair presentation of our financial position at such dates and the operating results and cash flows for those periods. Certain information normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States (GAAP) has been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) for quarterly reporting.

The information included in this Quarterly Report on Form 10-Q should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended December 31, 2007 filed with the SEC. The Condensed Consolidated Balance Sheet as of December 31, 2007 is derived from our audited consolidated financial statements as of that date.

Our revenues, expenses, assets and liabilities vary during each quarter of the year. Therefore, the results and trends in these interim condensed consolidated financial statements may not be indicative of results for any other interim period or for the entire year. For example, we receive a substantial portion of our royalty revenues on sales of the product Synagis®, marketed by MedImmune, Inc. (MedImmune). This product has significantly higher sales in the fall and winter, which to date have resulted in much higher royalties recognized by us with respect to this product in our first and second quarters than in other quarters since we generally recognize royalty revenue in the quarter subsequent to sales by our licensees.

Additionally, our master patent license agreement with Genentech, Inc. (Genentech) provides for a royalty fee structure that has four tiers, under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and sold anywhere (U.S.-based Sales) in a given calendar year decreases during that year on incremental U.S.-based Sales above the net sales thresholds. As a result, Genentech's average annual royalty rate during a year declines as Genentech's cumulative U.S.-based Sales increase during that year. Because we receive royalties in arrears, the average royalty rate for payments we receive from Genentech in the second calendar quarter, which would be for Genentech's sales from the first calendar quarter, is higher than the average royalty rate for following quarters. The average royalty rate for payments we receive from Genentech is lowest in the first calendar quarter, which would be for Genentech's sales from the fourth calendar quarter, when more of Genentech's U.S.-based Sales bear royalties at lower royalty rates. With respect to royalty-bearing products that are both manufactured and sold outside of the United States (ex-U.S.-based Sales), the royalty rate that we receive from Genentech is a fixed rate based on a percentage of the underlying ex-U.S.-based Sales. The mix of U.S.-based Sales and ex-U.S.-based Sales and the manufacturing location are outside of our control and have fluctuated in the past and may continue to fluctuate in the future.

Principles of Consolidation

The condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries after elimination of inter-company accounts and transactions.

Management Estimates

The preparation of financial statements in conformity with GAAP requires the use of management's estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Significant Customers and Revenues by Geographic Area

The following table summarizes revenues from our licensees which individually accounted for 10% or more of our total revenues from continuing operations for the three months ended March 31, 2008 and 2007 (as a percentage of total revenues):

	Three Months Ended March 31,	
	2008	2007
Licensees		
Genentech, Inc.	51%	56%
MedImmune, Inc.	28%	24%

Cash Equivalents, Restricted Cash, Marketable Securities and Concentration of Credit Risk

We consider all highly liquid investments with original maturities of three months or less at the date of purchase to be cash equivalents. We place our cash, cash equivalents, marketable securities and restricted cash and investments with high-credit-quality financial institutions and in securities of the U.S. government, U.S. government agencies and U.S. corporations and, by policy, limit the amount of credit exposure in any one financial instrument.

2. Stock-Based Compensation

Stock-based compensation expense recognized under Statement of Financial Accounting Standards (SFAS) No. 123, "Share-Based Payment (Revised 2004)" (SFAS No. 123(R)) for employees and directors was as follows:

	Three Months Ended March 31,	
(in thousands)	2008	2007
Research and development	$ 1,637	$ 2,579
General and administrative	2,220	1,280
Discontinued operations	2,291	1,361
Total stock-based compensation expense	$ 6,148	$ 5,220

Stock-based compensation expense for the first quarter of 2008 included stock option modification charges totaling $3.8 million. These stock option modification charges related to accelerated vesting and extended exercise periods for certain stock options in connection with the termination of certain of our employees. The majority of the stock option modification charges related to the termination of certain employees as a result of the sale of the Commercial and Cardiovascular Assets, which is classified within discontinued operations. See Note 5 for further information.

Stock Option Activity

A summary of our stock option activity for the period is presented below:

(in thousands)	Options	
	Number of Shares	Weighted Average Exercise Price
Outstanding as of December 31, 2007	14,956	$ 19.85
Granted	86	$ 15.99
Exercised	(535)	$ 9.21
Forfeited	(1,820)	$ 21.26
Outstanding as of March 31, 2008	12,687	$ 20.07
Exercisable as of March 31, 2008	9,071	$ 19.66

Total unrecognized compensation cost related to unvested stock options outstanding as of March 31, 2008, excluding potential forfeitures, was $44.7 million, which we expect to recognize over a weighted-average period of 2.8 years.

Restricted Stock Activity

A summary of our restricted stock activity for the period is presented below:

(in thousands)	Restricted Stock	
	Number of Shares	Weighted Average Grant-Date Fair Value
Unvested at December 31, 2007	208	$ 20.33
Awards granted	2	$ 15.01
Awards vested	(2)	$ 19.14
Awards forfeited	(49)	$ 21.03
Unvested at March 31, 2008	159	$ 20.06

Total unrecognized compensation cost related to unvested restricted stock outstanding as of March 31, 2008, excluding potential forfeitures, was $3.5 million, which we expect to recognize over a weighted-average period of 1.9 years.

Employee Stock Purchase Plan (ESPP)

The stock-based compensation expense in connection with our ESPP was $0.3 million and $0.4 million for the three-month periods ended March 31, 2008 and 2007, respectively.

3. Net Loss per Share

In accordance with SFAS No. 128, “Earnings per Share” (SFAS 128), we compute basic net income (loss) per share using the weighted-average number of shares of common stock outstanding during the periods presented, less the weighted-average number of shares of restricted stock that are subject to repurchase. We compute diluted net income (loss) per share for our continuing operations using the sum of the weighted-average number of common and common equivalent shares outstanding. Common equivalent shares used in the computation of diluted net income per share result from the assumed exercise of stock options, the issuance of restricted stock, the assumed issuance of common shares under our ESPP using the treasury stock method, and the assumed conversion of our 2.00%, $250.0 million Convertible Senior Notes (the 2005 Notes) and our 2.75%, $250.0 million Convertible Subordinated Notes (the 2003 Notes), including both the effect on interest expense and the inclusion of the underlying shares using the if-converted method.

The following is a reconciliation of the numerators and denominators of the basic and diluted income from continuing operations per share computations for the three months ended March 31, 2008 and 2007:

(in thousands)	Three Months Ended March 31,	
	2008	2007
Numerator		
Income from continuing operations used to compute basic income from continuing operations per share	$ 29,600	$ 216
Add back interest expense for convertible notes, net of estimated tax	2,859	—
Income used to compute diluted income per share for continuing operations	$ 32,459	$ 216
Denominator		
Total weighted-average shares used to compute basic income (loss) per share	117,525	115,104
Effect of dilutive stock options	705	1,792
Assumed release of common stock in escrow	—	845
Restricted stock outstanding	—	24
ESPP withholdings	32	—
Assumed conversion of convertible notes	22,970	—
Shares used to compute diluted income from continuing operations per share	141,232	117,765

We have excluded 12.5 and 8.9 million of outstanding stock options and restricted stock from our diluted earnings per share calculations for the three months ended March 31, 2008 and 2007, respectively, as such amounts would have been antidilutive. In addition, during the three months ended March 31, 2007, we excluded 23.0 million shares underlying our convertible debt securities as such amounts would have been antidilutive.

4. Comprehensive Loss

Comprehensive loss is comprised of net loss and other comprehensive income (loss). Specifically, we include in other comprehensive loss the changes in unrealized gains and losses on our holdings of available-for-sale securities, which are excluded from our net loss. In addition, other comprehensive loss

includes the liability that has not yet been recognized as net periodic benefit cost for our postretirement benefit plan. The following table presents the calculation of our comprehensive loss:

(in thousands)	2008	2007
Net loss	$ (61,875)	$ (10,606)
Other comprehensive loss:		
Change in unrealized gains and losses on marketable securities, net of taxes	82	239
Change in postretirement benefit liability not yet recognized in net periodic benefit expense	18	21
Total comprehensive loss	$ (61,775)	$ (10,346)

5. Discontinued Operations and Assets Held for Sale

We classified the Commercial and Cardiovascular Assets, excluding goodwill, as 'held for sale' in our Consolidated Balance Sheet as of December 31, 2007. As we will not have significant or direct involvement in the future operations related to the Commercial and Cardiovascular Assets, we have presented the results of the Commercial and Cardiovascular Operations as discontinued operations in the Consolidated Statement of Operations for the current and comparative periods in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets" (SFAS No. 144). As of December 31, 2007, goodwill related entirely to the Commercial and Cardiovascular Operations.

In March 2008, we closed the sales of the Commercial and Cardiovascular Assets. We sold the rights to IV *Busulfex*, including trademarks, patents, intellectual property and related assets, to Otsuka Pharmaceutical Co., Ltd. (Otsuka) for $200 million in cash and an additional $1.4 million for the IV *Busulfex* inventories. We also sold the rights to *Cardene*, *Retavase* and ularitide, including all trademarks, patents, intellectual property, inventories and related assets (together, our Cardiovascular Assets), to EKR Therapeutics, Inc. (EKR). In consideration for the Cardiovascular Assets sold to EKR, we received upfront proceeds of $85 million, $6 million of which was placed in an escrow account for a period of approximately one year to cover certain product return related costs under the purchase agreement. In addition, the purchase agreement includes contingent consideration of up to $85 million in potential future milestone payments as well as potential future royalties on certain *Cardene* and ularitide product sales.

We recognized a pre-tax loss of $64.6 million in connection with the sale of the Commercial and Cardiovascular Assets. This loss was comprised of the total upfront consideration from the sales of the Commercial and Cardiovascular Assets of $280.4 million plus the write-off of $10.6 million in net liabilities, less the book values of intangible assets and inventories of $268.2 million, the write-off of goodwill of $81.7 million and transaction fees of $5.7 million.

The results of our discontinued operations for the three months ended March 31, 2008 and 2007 were as follows:

	Three Months Ended March 31,	
(In thousands)	2008	2007
Net revenues	$ 39,359	$ 49,127
Total costs and expenses (1)	(102,807)	(59,914)
Income tax expense (2)	(28,027)	(35)
Loss from discontinued operations	$ (91,475)	$ (10,822)

(1) Included within total costs and expenses is a loss of $64.6 million that we recognized in connection with the sale of the Commercial and Cardiovascular Operations.

(2) Income tax expense attributable to our discontinued operations during the three months ended March 31, 2008 was primarily related to the tax gain on the sale of the Commercial and Cardiovascular Assets. Although we recognized a loss on the sale of these assets for financial reporting purposes, for tax purposes, we included the fair value of the contingent consideration from EKR in our proceeds, which included potential future milestone payments as well as potential future royalties on certain *Cardene* and ularitide product sales. In addition, the tax basis in the Commercial and Cardiovascular Assets was less than the book value recorded for financial reporting purposes. Therefore, we recognized a taxable gain and incurred alternative minimum tax on the sale of the Commercial and Cardiovascular Assets. The income tax payable attributable to our discontinued operations for the first quarter of 2008 was $6.5 million. The $21.5 million difference between the income tax payable and the income tax expense represents the tax benefit of certain tax deductions in connection with stock-based compensation, and such difference has been credited to additional paid-in capital.

In connection with the sale of the Commercial and Cardiovascular Assets, we entered into agreements with both Otsuka and EKR to provide certain transitional services. We expect to provide these transitional services over a period of approximately 12 months. Any fees or cost reimbursements received for transitional services will be classified within discontinued operations.

Commercial Restructuring and Retention Plan

In connection with the divesture of the Commercial and Cardiovascular Assets, we committed to provide certain severance benefits to those employees whose employment positions we would eliminate in connection with the transactions. Under SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS No. 146), we recognized expenses for these severance benefits of $1.8 million during the first quarter of 2008, which was included within discontinued operations. Of this $1.8 million, $1.7 million was included in other accrued liabilities as of March 31, 2008.

During the fourth quarter of 2007, the Compensation Committee of our Board of Directors approved a modification to the existing terms of outstanding stock options held by our Commercial Employees to accelerate the vesting of up to 25% of the original grant amount upon termination of the Commercial Employees, if the sale of the Commercial and Cardiovascular Assets occurred prior to a change in control of the Company. During the first quarter of 2008, we recognized $2.3 million of stock-based compensation expense related to the Commercial Employees, which was included within discontinued operations.

6. Sale of Manufacturing Assets

In March 2008, we sold our Minnesota manufacturing facility and related operations to an affiliate of Genmab A/S (Genmab), for total cash proceeds of $240 million. Under the terms of the purchase agreement, Genmab acquired our manufacturing and related administrative facilities in Brooklyn Park, Minnesota, and related assets therein, and assumed certain of our lease obligations related to our facilities in Plymouth, Minnesota (together, the Manufacturing Assets). In connection with the sale of the Manufacturing Assets, we entered into an agreement with Genmab under which we and Genmab will each provide transitional services to the other over a maximum period of 12 months.

We recognized a pre-tax gain of $49.7 million upon the close of the sale in March 2008. Such gain represents the $240 million in gross proceeds, less the net book value of the underlying assets transferred of $185.4 million and $4.9 million in transaction costs and other charges.

In addition, to fulfill our clinical manufacturing needs in the near-term, we entered into a clinical supply agreement with Genmab that became effective upon the close of the transaction. Under the terms of the clinical supply agreement, Genmab agreed to produce clinical trial material for certain of our pipeline products until March 2010.

7. Restructuring and Other Charges

Overall Company Restructuring

In an effort to reduce our operating costs to a level more consistent with a biotechnology company focused on antibody discovery and development, in March 2008 we commenced a restructuring plan pursuant to which we eliminated approximately 120 employment positions. We intend to eliminate approximately 130 additional employment positions over the next 12 months. All impacted employees were notified in March 2008. Subsequent to the completion of the restructuring, we expect to have approximately 300 employees.

Employees terminated in connection with the restructuring are eligible for a package consisting of severance payments of generally 12 weeks of salary and medical benefits along with up to three months of outplacement services. During the first quarter of 2008, we recognized restructuring charges of $5.6 million consisting of post-termination severance costs as well as salary accruals relating to the portion of the 60-day notice period over which the terminated employees would not be providing services to the Company.

Facilities Related Restructuring

During the third quarter of 2007, we initiated our move from Fremont, California to our current location in Redwood City, California. In connection with this move, we ceased use of a portion of the leased property in Fremont, California and, as a result, we recognized idle facilities charges during 2007. The leases on these facilities terminated at the end of first quarter of 2008, and nearly all related obligations were fully paid by March 31, 2008.

In addition, during 2007, we ceased use of two of our leased facilities in Plymouth, Minnesota. In connection with the sale of our Manufacturing Assets, Genmab assumed our obligations for one of these two facilities. We expect to pay all obligations accrued relating to the remaining lease by the end of the first quarter of 2009.

The following table summarizes the restructuring activity discussed above, as well as the remaining reserve balance at March 31, 2008:

(in thousands)	Personnel Costs	Facilities Related	Total
Balance at December 31, 2007	$ 411	$ 1,912	$ 2,323
Restructuring charges	5,547	82	5,629
Payments	(377)	(1,266)	(1,643)
Balance at March 31, 2008	$ 5,581	$ 728	$ 6,309

***** Excludes restructuring charges for employees terminated in connection with the sale of the Commercial and Cardiovascular Assets. See Note 5 for further information.

Other Charges

In connection with our restructuring efforts, we offered retention bonuses and other incentives to two employee groups: (1) ongoing employees that we hope to retain after the restructuring, and (2) transition employees that we hope to retain through a transition period. This is in addition to the retention programs that we implemented during the fourth quarter of 2007, under which we recognized $1.1 million in expenses in 2007. We intend to recognize the expense for these retention programs over the period from the respective dates the programs were approved through the estimated service period for transition employees or until the expected pay-out date for ongoing employees. We recognized $2.6 million in expenses under these retention programs during the first quarter of 2008. As of March 31, 2008, the total related liability accrued was $3.6 million. Such amounts have been classified as research and development expenses and general and administrative expenses in the financial statements. The total retention benefit under the plan is estimated to be $16.8 million. We expect to recognize $13.1 million of additional expense and to pay out the retention bonuses over the next seven quarters.

8. Asset Impairment Charges

Total asset impairment charges recognized in continuing operations for the three months ended March 31, 2008 and 2007 were $3.5 million and none, respectively. During the first quarter of 2008, such charges primarily represented the costs of certain research equipment that is expected to have no future useful life, and certain information technology projects that were terminated and have no future benefit to us as a result of our restructuring activities.

9. Non-Monetary Transaction

In January 2008, we and Biogen Idec entered into an exclusive worldwide licensing agreement with Ophthotech Corp. (Ophthotech), a privately held company, for an anti-angiogenesis antibody to treat Age-Related Macular Degeneration (AMD). Under the terms of the agreement, we and Biogen Idec have granted Ophthotech worldwide development and commercial rights to all ophthalmic uses of volociximab (M200). In addition, we and Biogen Idec have an obligation to supply both clinical and commercial M200 product to Ophthotech. In connection with this agreement, we received an equity position in Ophthotech, and we may receive a combination of development and commercial milestone payments and royalties on future product sales.

We have estimated the fair value of the nonmarketable equity instruments received based predominately upon the price of similar Ophthotech equity instruments that Ophthotech had recently sold to independent parties for cash consideration. Based on this approach, we have estimated the fair value of our equity position to be $1.8 million, which we recorded in other assets on the Consolidated Balance Sheet as of March 31, 2008.

For the purposes of revenue recognition, we are treating the grant of the license and the manufacturing obligation as a single unit of accounting. Because we are currently unable to estimate the time period over which we are obligated to supply the M200 product for clinical and commercial purposes, we have not recognized any revenue under the agreement. We have recorded the fair value of the consideration received as long-term deferred revenue as of March 31, 2008. We do not intend to recognize any revenue related to this agreement until such point that we are able to reasonably estimate the date at which our obligation will end.

10. Restricted Cash

As of March 31, 2008 and December 31, 2007, we had a total of $18.3 million and $28.3 million of restricted cash, respectively. As of March 31, 2008 and December 31, 2007, $15.0 and $25.0 million of the restricted cash, respectively, supported letters of credit on which our landlord and construction contractor can draw if we do not fulfill our obligations with respect to the construction of certain leasehold improvements to our Redwood City, California, facility. The remaining $3.3 million of long-term restricted cash supports letters of credit serving as a security deposit for our Redwood City, California leases.

11. Other Accrued Liabilities

Other accrued liabilities consisted of the following:

(in thousands)	March 31, 2008	December 31, 2007
Consulting and services	$ 9,715	$ 10,110
Accrued clinical and pre-clinical trial costs	5,135	6,314
Restructuring accruals	8,046	2,322
Accrued income taxes	8,593	1,357
Accrued interest	1,471	4,453
Construction-in-process	—	2,288
Other	7,761	6,994
Total	$ 40,721	$ 33,838

12. Income Taxes

Income tax expense attributable to our continuing operations during the three months ended March 31, 2008 was $1.0 million, which was related primarily to federal and state alternative minimum taxes and foreign taxes on income earned by our foreign operations. As a result of the sale of our Commercial and Cardiovascular Assets in March 2008, we no longer have deferred tax liabilities, and due to our lack of earnings history, the gross deferred tax assets have been fully offset by a valuation allowance and no longer appear on our Consolidated Balance Sheet as of March 31, 2008.

The income tax expense for our continuing operations during the three months ended March 31, 2007 was $30,000, which was related primarily to state taxes and foreign taxes on income earned by our foreign operations.

13. Fair Value Measurements

As of January 1, 2008, we adopted FASB Statement No. 157, “Fair Value Measurements” (FAS 157). FAS 157 established a framework for measuring fair value in GAAP and clarified the definition of fair value within that framework. FAS 157 does not require any new fair value measurements in GAAP. FAS 157 introduced, or reiterated, a number of key concepts which form the foundation of the fair value measurement approach to be utilized for financial reporting purposes. The fair value of our financial instruments reflect the amounts that would be received if we were to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). FAS 157 also established a fair value hierarchy that prioritizes the use of inputs used in valuation techniques into the following three levels:

- Level 1—quoted prices in active markets for identical assets and liabilities
- Level 2—observable inputs other than quoted prices in active markets for identical assets and liabilities
- Level 3—unobservable inputs

At March 31, 2008, we determined the fair values of our financial assets using Level 1 and Level 2 inputs, as reflected in the table below:

(in thousands)	Level 1	Level 2	Level 3	Total
Institutional money market funds	$ 212,475	$ —	$ —	$ 212,475
Securities of U.S. Government sponsored entities maturing within one year	—	626,363	—	626,363
Corporate securities maturing within one year	—	56,992	—	56,992
Total financial assets	$ 212,475	$ 683,355	$ —	$ 895,830

The following table presents the classification of our financial assets on our Consolidated Balance Sheet as of March 31, 2008:

(in thousands)		
Cash and cash equivalents	$	874,435
Short term marketable securities		21,395
Total financial assets	$	895,830

We have excluded from the tables above $1.6 million of accrued interest, which has been recorded as part of marketable securities, and $31.2 million of cash, which is included in the cash and cash equivalents caption, in the Consolidated Balance Sheet.

14. Subsequent Events

In April 2008, we declared a special cash dividend of $4.25 per share of common stock (the Dividend), which, based on the number of stockholders as of the May 5, 2008 record date, was $507.0 million. We paid the Dividend in May 2008 using proceeds from the sales of the Commercial and Cardiovascular Assets and the Manufacturing Assets. In connection with the Dividend, the conversion rate for the Company's outstanding 2.00% Convertible Senior Notes due February 15, 2012 (the 2012 notes) and 2.75% Convertible Subordinated Notes due 2023 (the 2023 notes) was adjusted based on the amount of the Dividend and the trading price of our stock in certain periods pursuant to the terms of the applicable indenture. For the 2023 notes, the conversion rate increased effective on May 6, 2008 from 49.6618 shares of common stock per $1,000 principal amount of notes to 72.586 shares of common stock per $1,000 principal amount of notes. For the 2012 notes, the conversion rate increased effective on May 6, 2008 from 42.219 shares of common stock per $1,000 principal amount of notes to 61.426 shares of common stock per $1,000 principal amount of notes.

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

This report includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended. All statements other than statements of historical facts are "forward looking statements" for purposes of these provisions, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of management for future operations, any statements concerning proposed new products or licensing or collaborative arrangements, any statements regarding future economic conditions or performance, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as "believes," "may," "will," "expects," "plans," "anticipates," "estimates," "potential," or "continue" or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained in this report are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties, including the risk factors set forth below, and for the reasons described elsewhere in this report. All forward-looking statements and reasons why results may differ included in this report are made as of the date hereof, and we assume no obligation to update these forward-looking statements or reasons why actual results might differ.

OVERVIEW

We are a biotechnology company focused on the discovery and development of novel antibodies in oncology and immunologic diseases. We receive royalties and other revenues through licensing agreements with biotechnology and pharmaceutical companies based on our proprietary antibody humanization technology platform. The technology subject to these licensing agreements has contributed to the development by our licensees of 10 marketed products. We currently have several investigational compounds in clinical development for oncology and immunologic diseases, two of which we are developing in collaboration with Biogen Idec MA, Inc. (Biogen Idec). Our research platform is focused on the discovery of novel antibodies for the treatment of cancer and immunologic diseases.

During the period from March 2005 through early March 2008, we marketed and sold acute-care products in the hospital setting in the United States and Canada. We acquired the rights to three of these products, *Cardene* IV®, IV *Busulfex*® and *Retavase*®, which are non-antibody-based products, in connection with our acquisitions of ESP Pharma, Inc. as well as the rights to *Retavase* in March 2005. We subsequently acquired the rights to *Cardene* SR® in September 2006. These commercial products (together, the Commercial and Cardiovascular Assets) and the related operations (the Commercial and Cardiovascular Operations) were fully divested during the first quarter of 2008. We recognized a pre-tax loss of $64.6 million in connection with the sale of the Commercial and Cardiovascular Assets, which is presented within discontinued operations, during the first quarter of 2008.

In March 2008, we sold our Minnesota manufacturing facility and related operations to an affiliate of Genmab A/S (Genmab), for total cash proceeds of $240 million. Under the terms of this agreement, Genmab acquired our manufacturing and related administrative facilities in Brooklyn Park, Minnesota, and related assets therein, and assumed certain of our lease obligations related to our facilities in Plymouth, Minnesota (together, the Manufacturing Assets). In connection with this transaction, under the terms of a clinical supply agreement, Genmab agreed to produce clinical material for certain of our pipeline products until March 2010.

Also during March 2008, in an effort to reduce our operating costs to a level more consistent with a biotechnology company focused on antibody discovery and development, we commenced a restructuring plan pursuant to which we eliminated approximately 120 employment positions. We intend to eliminate approximately 130 additional employment positions over the next 12 months. Many of these positions support our provision of transition services to the acquirers of the Commercial and Cardiovascular Assets and Manufacturing Assets in connection with our sale of these assets. We offered these 130 transitional employees and the approximately 300 employees that we expect to retain after the restructuring retention bonuses and other incentives to encourage these employees to stay with the Company until the Spin-off of our biotechnology assets (see below) or with the Spin-off company after the separation transaction. In connection with this overall restructuring effort, we expect to incur significant transition-related expenses over the next 12-month period, a portion of which will be recognized as restructuring charges.

In April 2008, we announced our intent to spin off our biotechnology assets into a separate publicly traded entity apart from our antibody humanization royalty assets (the Spin-off). We expect to retain the rights to antibody humanization royalty revenues from all current and future licensed products and plan

to distribute this income to our stockholders, net of any operating expenses, debt service and income taxes. Subsequent to the Spin-off, we plan to have only a nominal number of employees to support our intellectual properties and provide for certain essential reporting and management functions of a public company. We expect to capitalize the new biotechnology Spin-off company with approximately $375 million in cash at the completion of the Spin-off transaction. This initial capitalization, along with potential milestone payments, non-humanization royalties and other payments under collaboration and other agreements, including the contingent consideration related to the sale of the Commercial and Cardiovascular Assets, is expected to fund the Spin-off company for approximately three years based on current operating plans. We expect to complete the Spin-off by the end of 2008. While we plan for the Spin-off, we continue to evaluate opportunities to sell or securitize all or part of our antibody humanization royalties; however, we can not assure that we will be able to consummate a sale or securitization of our antibody humanization patent royalty stream on terms acceptable to us, or at all.

In conjunction with our announcement of our intent to spin off our biotechnology assets, in April 2008 we declared a special cash dividend of $4.25 per share of common stock (the Dividend), which was paid in May 2008 using proceeds from the sale of the Commercial and Cardiovascular Assets and the Manufacturing Assets. Based on the number of stockholders as of the May 5, 2008 record date, the Dividend was $507.0 million.

We were organized as a Delaware corporation in 1986 under the name Protein Design Labs, Inc. In 2006, we changed our name to PDL BioPharma, Inc.

Research and Development Programs

We have several investigational antibody-based compounds in clinical development for cancer and immunologic diseases, some of which we are developing in collaboration with another biotechnology company. The table below lists various investigational compounds for which we are pursuing clinical development activities either on our own or in collaboration. Not all clinical trials for each product candidate are listed below. As part of our transition services agreement with EKR Therapeutics, Inc. (EKR), which purchased the rights to *Cardene*, *Retavase* and ularitide, including all trademarks, patents, intellectual property, inventories and related assets in March 2008, we continue to provide research and development services for certain life cycle management activities for *Cardene*. Under this agreement, EKR will reimburse us for all costs and expenses incurred in connection with these activities, all of which have been reflected as discontinued operations. As this is no longer an on-going PDL-sponsored program, we have excluded *Cardene* from the table below. The development and commercialization of our product candidates are subject to numerous risks and uncertainties, as noted in our “Risk Factors” of this Quarterly Report.

Product Candidate	Description/Indication	Phase of Development	Collaborator
Daclizumab	Asthma	Phase 2 program being evaluated	
	Multiple sclerosis	Phase 2	Biogen Idec
	Transplant maintenance	Phase 2 program advancement pending partnership	
Volociximab (M200)	Solid tumors	Phase 2 program ongoing partnership	Biogen Idec
HuLuc63	Multiple myeloma	Phase 1	
PDL192	Solid tumors	IND filed; phase 1 pending	

Daclizumab. Daclizumab is a humanized monoclonal antibody that binds to the alpha chain (CD25) of the interleukin-2 (IL-2) receptor on activated T cells, which are white blood cells that play a role in inflammatory and immune-mediated processes in the body. Daclizumab is the active component of the approved drug marketed worldwide by Hoffmann La-Roche (Roche) as *Zenapax*, which is indicated for the prevention of acute organ transplant rejection following transplant surgery. We and our collaborator, Biogen Idec, are currently testing daclizumab in a phase 2 study in patients with multiple sclerosis. In March 2007, we and Biogen Idec announced that the CHOICE trial, a phase 2, randomized, double-blind, placebo-controlled trial of daclizumab, met its primary endpoint in relapsing MS patients being treated with interferon beta. In October 2007, we presented the phase 2 CHOICE data that demonstrated daclizumab 2 mg/kg administered every two weeks as a subcutaneous injection added to interferon beta therapy significantly reduced new or enlarged gadolinium-enhancing lesions at week 24 compared to interferon beta therapy alone, in patients with active relapsing multiple sclerosis. Patients from this trial were followed for an additional 48 weeks after the treatment period to further assess safety and efficacy. We, together with Biogen Idec, initiated in the first quarter of 2008 a phase 2 monotherapy trial of daclizumab, the SELECT trial, to advance the overall clinical development program in relapsing MS.

In addition, we are independently pursuing development of daclizumab for treatment of moderate to severe asthma. We also continue to evaluate daclizumab for transplant maintenance, including potential collaboration opportunities.

Volociximab (M200). Volociximab is a chimeric monoclonal antibody that inhibits the functional activity of a5ß1 integrin, a protein found on activated endothelial cells. Blocking the activity of a5ß1 integrin has been found in various animal models to prevent angiogenesis, which is the formation of new blood vessels that feed tumors and allow them to grow and metastasize.

We and our collaborator, Biogen Idec, are currently investigating volociximab in various phase 2, open-label clinical trials in patients with advanced solid tumors. This investigation includes two exploratory clinical trials in ovarian cancer, initiated in August 2007, and two phase 1 trials in non-small cell lung cancer (NSCLC), which were initiated during the last quarter of 2007 and the first quarter of 2008. In April 2008, we and Biogen Idec terminated one of the two exploratory clinical trials in ovarian cancer, leaving a total of three ongoing phase 2 clinical trials.

HuLuc63. HuLuc63 is a humanized monoclonal antibody that binds to CS1, a cell surface glycoprotein that is highly expressed on myeloma cells but minimally expressed on normal cells. HuLuc63 may induce anti-tumor effects through antibody-dependent cellular cytotoxicity activity on myeloma cells. The phase 1 trial of HuLuc63 in patients with advanced multiple myeloma is ongoing. We anticipate initiating phase 1 combination trials of HuLuc63 in the second half of 2008.

PDL192. PDL192 is a novel humanized monoclonal antibody. In April 2008, after completion of preclinical studies, we filed an IND for PDL 192 in solid tumor applications.

Technology Outlicense Agreements

We have licensed and will continue to offer to license our humanization patents in return for license fees, annual maintenance payments and royalties on product sales. The 10 humanized antibody products listed below are currently approved for use by the U.S. Food and Drug Administration (FDA) and are licensed under our patents.

Licensee	Product Name
Genentech, Inc. (Genentech)	*Avastin*®
	Herceptin®
	Xolair®
	Raptiva®
	Lucentis®
MedImmune, Inc. (MedImmune)	*Synagis*®
Wyeth	*Mylotarg*®
Elan Corporation, Plc (Elan)	*Tysabri*®
UCB Group	*Cimzia*® *(1)*
Roche	*Zenapax*® *(2)*

(1) Cimzia was approved for marketing by the FDA in April 2008. We expect to receive and recognize royalty revenues on sales of Cimzia beginning in the third quarter of 2008.

(2) Roche is obligated to pay us royalties on *Zenapax* only once product sales have reached a certain threshold; we have not received royalties on sales of *Zenapax* since the first quarter of 2006 and we do not expect to receive royalty revenue from Roche's sales of *Zenapax* in the future.

Collaborative and Strategic Agreement

We have a collaboration agreement with Biogen Idec for the joint development, manufacture and commercialization of daclizumab in MS and indications other than transplant and respiratory diseases, and for shared development and commercialization of volociximab (M200) in all indications. Under our collaboration agreement with Biogen Idec, we share equally the costs of all development activities. This agreement requires each party to undertake extensive efforts in support of the collaboration and require the performance of both parties to be successful. We anticipate recognizing an increasing amount of revenue and expenses as we progress with this collaboration.

We continue to evaluate potential opportunities to collaborate on certain other programs, or on our drug development capabilities, with other pharmaceutical or biotechnology companies to maximize the value of these programs, mitigate risks and reduce costs, and may enter into other collaboration agreements in the future.

Summary of the First Quarter of 2008

In the first quarter of 2008, our total revenues from continuing operations were $57.3 million, a 3% decrease from $58.9 million in the comparable period in 2007. This revenue decline was driven primarily by a decrease in license, collaboration and other revenues.

Our total expenses from continuing operations in the first quarter of 2008 were $27.6 million, a significant decrease from $60.1 million in the first quarter of 2007 primarily as a result of a $49.7 million gain realized on the sale of our Manufacturing Assets in the 2008 period. Total costs and expenses in the first quarter of 2008 also included restructuring charges of $5.6 million and asset impairment charges of $3.5 million. We did not recognize any such charges or gains in the comparable period in 2007. Our income from continuing operations for the first quarter of 2008 was $29.6 million, compared to $0.2 million in the prior-year comparable period. In the first three months of 2008, net cash used in operating activities was $29.3 million, a decrease from $9.1 million used in operating activities in the comparable period in 2007. At March 31, 2008, we had cash, cash equivalents, marketable securities and restricted cash of $946.9 million, compared to $440.8 million at December 31, 2007, an increase primarily attributable to the proceeds realized from the sales of the Commercial and Cardiovascular Assets and the Manufacturing Assets. As of March 31, 2008, we had $526.7 million in total debt outstanding, which included $500.0 million in convertible notes, $250.0 million of which are callable in each of 2008 and 2010 and due in 2023 and 2012, respectively.

We expect that in the foreseeable future, our revenue growth will be generated primarily by royalties. We expect that our operating expenses in the near-term will decrease significantly relative to recent historical expense levels due to the sales of the Commercial and Cardiovascular Assets and the Manufacturing Assets in March 2008, and the restructuring that is in process and that will continue over the next several quarters. However, we expect to incur additional charges and expenses during 2008 and into 2009 related to the restructuring, including severance payments to terminated employees, and related to retention incentives we have offered to transitional and ongoing employees. Subsequent to the completion of our restructuring activities, we expect that our expenses could increase in future years as we increase the number of our pipeline programs, advance our clinical programs into more expensive late-stage clinical trials and as a result of the extensive resource commitments required to achieve regulatory approval of potential products.

Economic and Industry-wide Factors

Various economic and industry-wide factors are relevant to us and could affect our business, including the factors set forth below.

- Our business will depend in significant part on our ability to develop innovative new drugs. Drug development, however, is highly uncertain and very expensive, typically requiring tens to hundreds of millions of dollars invested in research, development and manufacturing elements. Identifying drug candidates to study in clinical trials requires significant investment and may take several years. In addition, the clinical trial process for drug candidates is usually lengthy, expensive and subject to high rates of failure throughout the development process. As a result, a majority of the clinical trial programs for drug candidates are terminated prior to applying for regulatory approval. Even if a drug receives FDA or other regulatory approval, such approval could be conditioned on the need to conduct additional trials, or we or our licensees could be required to or voluntarily decide to suspend marketing of a drug as a result of safety or other events.

- Our industry is subject to extensive government regulation, and we must make significant expenditures to comply with these regulations. For example, the FDA regulates, among other things, the development, testing, research, manufacture, safety, efficacy, record-keeping, labeling, storage, approval, quality control, adverse event reporting, advertising, promotions, sale and distribution of our products. The development and marketing of our products outside of the United States is subject to similar extensive regulation by foreign governments, which regulations are not harmonized with the regulations of the United States.

- The manufacture of drugs and antibodies for use as therapeutics in compliance with regulatory requirements is complex, time-consuming and expensive. If our contract manufacturers are unable to manufacture product or product candidates in accordance with FDA and European good manufacturing practices, we may not be able to obtain or retain regulatory approval for our products. We are currently reliant on third-party manufacturers for all of our products.

- Our business success is dependent in significant part on our success in establishing intellectual property rights, either internally or through in-license of third-party intellectual property rights, and protecting our intellectual property rights. If we are unable to protect our intellectual property, we may not be able to compete successfully and our sales and royalty revenues and operating results would be adversely affected. Our pending patent applications may not result in the issuance of valid patents or our issued patents may not provide competitive advantages or may be reduced in scope. Proceedings to assert and defend our intellectual property rights are expensive, can, and have, continued over many years and could result in a significant reduction in the scope or invalidation of our patents, which could adversely affect our results of operations.

- To be successful, we must retain qualified clinical, scientific, marketing, administrative and management personnel. We face significant competition for experienced personnel and have experienced significant attrition in late 2007 and early 2008 as a result of the uncertainty created by the strategic initiatives we undertook during this period. We also implemented a restructuring in March 2008, which includes a significant reduction in force, and we expect to continue to face challenges in retaining qualified personnel as we transition to a more streamlined organization.

See also the “Risk Factors” section of this quarterly report for additional information on these economic and industry-wide and other factors and the impact they could have on our business and results of operations.

CRITICAL ACCOUNTING POLICIES AND THE USE OF ESTIMATES

The preparation of our financial statements in conformity with accounting principles generally accepted in the United States (GAAP) requires management to make estimates and assumptions that affect the amounts reported in our financial statements and

accompanying notes. Actual results could differ materially from those estimates. The items in our financial statements requiring significant estimates and judgments are as follows:

Revenue Recognition

We enter into patent license, collaboration and humanization agreements that may contain multiple elements, such as upfront license fees, reimbursement of research and development expenses, milestones related to the achievement of particular stages in product development and royalties. Under our collaboration arrangements, we may receive nonrefundable upfront fees, time-based licensing fees and reimbursement for all or a portion of certain predefined research and development or post-commercialization expenses, and our licensees may make milestone payments to us when they or we achieve certain levels of development with respect to the licensed technology. Generally, when there is more than one deliverable under the agreement, we account for the revenue as a single unit of accounting under Emerging Issues Task Force (EITF) Issue No. 00-21, “Revenue Arrangement with Multiple Deliverables,” for revenue recognition purposes. As a combined unit of accounting, the up-front payments are recognized ratably as the underlying services are provided under the arrangement. We recognize “at-risk” milestone payments upon achievement of the underlying milestone event and when they are due and payable under the arrangement. Milestones are deemed to be “at risk” when, at the onset of an arrangement, management believes that they will require a reasonable amount of effort to be achieved and are not simply reached by the lapse of time or perfunctory effort. We currently determine attribution methods for each payment stream based on the specific facts and circumstances of the arrangement. The EITF may provide additional guidance on the topic of “Revenue Recognition for a Single Deliverable for a Single Unit of Accounting (with Multiple Deliverables) That Have Multiple Payment Streams,” which could change our method of revenue recognition in future periods.

In addition, we occasionally enter into non-monetary transactions in connection with our patent licensing arrangements. Management must use estimates and judgments when considering the fair value of the technology rights acquired and the patent licenses granted under these arrangements. When available, the fair value of the non-monetary transaction is based on vendor-specific objective evidence of fair value of each significant element of the patent license agreement. Otherwise, management uses other methods of estimating fair value, such as current pricing information available to us. Therefore, the fair value of the technology right(s) acquired from the licensee is typically based on the fair value of the patent license and other consideration we exchange with the licensee.

Clinical Trial Expenses

We base our cost accruals for clinical trials on estimates of the services received and efforts expended pursuant to contracts with numerous clinical trial centers and clinical research organizations (CROs). In the normal course of business, we contract with third parties to perform various clinical trial activities in the ongoing development of potential drugs. The financial terms of these agreements vary from contract to contract, are subject to negotiation and may

result in uneven payment flows. Payments under the contracts depend on factors such as the achievement of certain events, the successful accrual of patients or the completion of portions of the clinical trial or similar conditions. The objective of our accrual policy is to match the recording of expenses in our financial statements to the actual services received and efforts expended. As such, we recognize direct expenses related to each patient enrolled in a clinical trial on an estimated cost-per-patient basis as services are performed. In addition to considering information from our clinical operations group regarding the status of our clinical trials, we rely on information from CROs, such as estimated costs per patient, to calculate our accrual for direct clinical expenses at the end of each reporting period. For indirect expenses, which relate to site and other administrative costs to manage our clinical trials, we rely on information provided by the CRO, including costs incurred by the CRO as of a particular reporting date, to calculate our indirect clinical expenses. In the event of early termination of a clinical trial, we accrue and recognize expenses in an amount based on our estimate of the remaining non-cancelable obligations associated with the winding down of the clinical trial, which we confirm directly with the CRO.

If our CROs were to either under or over report the costs that they have incurred or if there is a change in the estimated per patient costs, it could have an impact on our clinical trial expenses during the period in which they report a change in estimated costs to us. Adjustments to our clinical trial accruals primarily relate to indirect costs, for which we place significant reliance on our CROs for accurate information at the end of each reporting period. Based upon the magnitude of our historical adjustments, we believe that it is reasonably possible that a change in estimate related to our clinical accruals could be approximately 1% of our annual research and development expenses.

Employee Stock-Based Compensation

Under the provisions of SFAS No. 123(R), “Stock-Based Compensation” (SFAS No. 123(R)), we estimate the fair value of our employee stock awards at the date of grant using the Black-Scholes option-pricing model, which requires the use of certain subjective assumptions. The most significant of these assumptions are our estimates of the expected volatility of the market price of our stock and the expected term of the award. When establishing an estimate of the expected term of an award, we consider the vesting period for the award, our recent historical experience of employee stock option exercises (including forfeitures), the expected volatility, and a comparison to relevant peer group data. As required under the accounting rules, we review our valuation assumptions at each grant date and, as a result, our valuation assumptions used to value employee stock-based awards granted in future periods may change.

Further, SFAS No. 123(R) requires that employee stock-based compensation costs be recognized over the requisite service period, or the vesting period, in a manner similar to all other forms of compensation paid to employees. The allocation of employee stock-based compensation costs to each operating expense line are estimated based on specific employee headcount information at each grant date and estimated stock option forfeiture rates and revised, if necessary, in future periods if actual employee headcount information or forfeitures differ materially from those estimates. As a result, the amount of employee stock-based compensation costs we recognize in each operating expense category in future periods may differ significantly from what we have recorded in the current period. For the first quarter of 2008, we estimated our future forfeiture rate to be approximately 10%, which is based on historical forfeiture rates adjusted for certain one-time events and the impact of more recent trends on our future forfeitures. A five percentage point change in the rate of estimated stock option forfeitures could result in an increase or decrease to stock-based compensation expense of approximately $1.0 million.

Valuation and Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, we periodically evaluate whether current facts or circumstances indicate that the carrying value of our depreciable assets held and to be used may not be recoverable. If such circumstances are determined to exist, an estimate of undiscounted future cash flows produced by the long-lived asset, or the appropriate grouping of assets, is compared to the carrying value to determine whether impairment exists. If an asset is determined to be impaired, the loss is measured based on the difference between the asset’s fair value and its carrying value. We report an asset to be disposed of at the lower of its carrying value or its estimated net realizable value.

RESULTS OF OPERATIONS

Three Months Ended March 31, 2008 and 2007

Revenues

	Three Months Ended March 31,		
(in thousands)	2008	2007	% Change
Royalties	$ 49,955	$ 48,595	3%
License, collaboration and other	7,374	10,261	(28)%
Total revenues	$ 57,329	$ 58,856	(3)%

Our total revenues decreased by $1.5 million, or 3%, in the three months ended March 31, 2008 from the comparable period in 2007 for reasons discussed below.

Royalties

Royalty revenues increased by $1.4 million, or 3.0%, in the three months ended March 31, 2008, from the comparable period in 2007. This increase primarily was due to higher royalties received from the sales of *Tysabri and Synagis*, which are marketed by Elan Corporation, Plc and MedImmune (AstraZeneca), respectively, which was partially offset by a decrease in royalties received from sales of products marketed by Genentech. Although Genentech reported higher product sales from its royalty-bearing products for its fourth quarter of 2007 as compared to its fourth quarter of 2006 (in each case impacting our royalty revenues for the following quarter), the average effective royalty rate applied to Genentech’s product sales during the first quarter of 2008 was lower than the rate applied in the comparable 2007 period primarily due to a significant decline in the amount and percentage of *Herceptin* product manufactured and sold outside the United States. This resulted in a greater percentage of *Herceptin* product sales in the first quarter of 2008 being subject to the tiered fee structure as opposed to the higher, fixed royalty rate that applies to Genentech products that are both manufactured and sold outside the U.S. In addition, of Genentech product sales subject to the tiered fee structure, royalties were received on sales in both the third and fourth tiers in the first quarter of 2007, while in the first quarter of 2008, all royalties were based on product sales at the fourth and lowest tier (see details of Genentech royalty structure discussed below).

Under most of the agreements for the license of rights under our humanization patents, we receive a flat-rate royalty based upon our licensees' net sales of covered products. Royalty payments are generally due one quarter in arrears; that is, generally in the second month of the quarter after the licensee has sold the royalty-bearing product. As noted above, however, our master patent license agreement with Genentech provides for a royalty fee structure that has four tiers, under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and sold anywhere (U.S.-based Sales) in a given calendar year decreases during that year on incremental U.S.-based Sales above the net sales thresholds. As a result, Genentech's average annual royalty rate during a year declines as Genentech's cumulative U.S.-based Sales increase during that year. Because we receive royalties in arrears, the average royalty rate for the payments we receive from Genentech in the second calendar quarter, which would be for Genentech's sales from the first calendar quarter, is higher than the average royalty rate for following quarters. The average royalty rate for payments we receive from Genentech is lowest in the first calendar

quarter, which would be for Genentech's sales from the fourth calendar quarter, when more of Genentech's U.S.-based Sales bear royalties at lower royalty rates. With respect to royalties that fall under the tiered fee structure, we allocate the royalty revenues among the different products based on the relative underlying net product sales reported to us by Genentech. With respect to royalty-bearing products that are both manufactured and sold outside of the United States (ex-U.S.-based Sales), the royalty rate that we receive from Genentech is a fixed rate based on a percentage of the underlying ex-U.S.-based Sales. The mix of U.S.-based Sales and ex-U.S.-based Sales and the manufacturing location are outside of our control and have fluctuated in the past and may continue to fluctuate in future periods.

Royalties from licensed product sales exceeding more than 10% of our total royalty revenues are set forth below (by licensee and product, as a percentage of total royalty revenue):

		Three Months Ended March 31,	
Licensee	Product Name	2008	2007
Genentech	*Avastin*	20%	19%
	Herceptin	28%	39%
MedImmune	*Synagis*	33%	30%

License, Collaboration and Other

	Three Months Ended March 31,		
(in thousands)	2008	2007	% Change
License and milestone from collaborations	$ 1,825	$ 5,868	(69)%
R&D services from collaborations	3,299	3,993	(17)%
License and other	2,250	400	463%
Total revenue from license, collaboration and other	$ 7,374	$ 10,261	(28)%

License, collaboration and other revenues consist of upfront licensing and patent rights fees, milestone payments related to licensed technology, license maintenance fees and revenue recognized under our collaboration agreements. License, collaboration and other revenues decreased by $2.9 million, or 28%, in the three months ended March 31, 2008 from the comparable period in 2007 primarily due to the absence in the 2008 period of certain revenues recognized in the first quarter of 2007 related to the termination of our agreement with Roche to co-develop daclizumab for transplant indications, which termination was effective in April 2007, and a decrease in revenues recognized under our collaboration agreement with Biogen Idec. These decreases were partially offset by $2.0 million in milestone payments, reflected as license and other, that we received in the first quarter of 2008 from certain of our licensees.

We continue to evaluate potential opportunities to collaborate with respect to certain development stage programs or our drug development capabilities with other pharmaceutical or biotechnology companies, and if we enter into other collaboration agreements in the future, our license, collaboration and other revenues likely would increase.

Costs and Expenses

	Three Months Ended March 31,		
(in thousands)	2008	2007	% Change
Research and development	$ 47,681	$ 48,091	(1)%
General and administrative	20,443	11,994	70%
Restructuring charges	5,629	—	*
Asset impairment charges	3,521	—	*
Gain on sale of assets	(49,671)	—	*
Total costs and expenses	$ 27,603	$ 60,085	(54)%

* Not presented as calculation is not meaningful.

Certain expenses related to the Commercial and Cardiovascular Operations, which were previously presented as cost of product sales, research and development expenses and general and administrative expenses in prior periods, have been presented as discontinued operations for all periods presented in the current financial statements.

We expect that our operating expenses in the near-term will decrease significantly relative to recent historical expense levels due to the sale of the Manufacturing Assets in March 2008 and the restructuring activities that are in process and that will continue over the next several quarters. However, we

expect to incur additional charges and expenses during 2008 and into 2009 related to the restructuring, including severance payments to terminated employees, and related to retention incentives we have offered to transition and ongoing employees. In addition, we are actively seeking to sublease excess capacity in our Redwood City facilities. If we are able to sublease any of this excess capacity, our lease expenses would decline. The process of subleasing office space can be a lengthy and uncertain process and we cannot assure if and when we may sublease any of our excess capacity or the amount of excess capacity that we may sublease.

Subsequent to the completion of our restructuring activities, we expect that our expenses could increase in future years as we increase the number of our pipeline programs, advance our clinical programs into more expensive late-stage clinical trials and as a result of the extensive resource commitments required to achieve regulatory approval of potential products.

Research and Development Expenses

Our research and development activities include research, process development, pre-clinical development, manufacturing and clinical development, which activities generally include regulatory, safety, medical writing, biometry, U.S. and European clinical operations, compliance, quality and program management. Research and development expenses consist primarily of costs of personnel to support these research and development activities, as well as outbound milestone payments and technology licensing fees, costs of preclinical studies, costs of conducting our clinical trials, such as fees to CROs and clinical investigators, monitoring costs, data management and drug supply costs, research and development funding provided to third parties and an allocation of facility and overhead costs, principally information technology. Research and development costs also include stock-based compensation expense accounted for under SFAS No. 123(R) as a component of personnel-related costs. Total stock-based compensation expenses recognized as research and development expenses were $1.6 million and $2.6 million during the quarters ended March 31, 2008 and 2007, respectively.

The decrease in our research and development expenses during the first quarter of 2008 in comparison to the first quarter of 2007 is attributable to decreases in our *Nuvion*® and PDL 192 program costs, partially offset by increases in development costs for HuLuc63 and daclizumab. The $7.3 million decrease in *Nuvion* costs is due to the decision to terminate the *Nuvion* phase 3 development program during the third quarter of 2007, and the $2.4 reduction in development expenses for PDL 192 was primarily driven by a decrease in PDL 192 manufacturing activity in the first quarter of 2008 in comparison to 2007. The $7.7 million and $2.0 million increases in program costs for HuLuc63 and daclizumab, respectively, were due to manufacturing campaigns that occurred in the first quarter of 2008, whereas there were no such manufacturing campaigns in the first quarter of 2007 for these products.

The table below reflects the stage of development for each of our products in clinical development and the research and development expenses recognized in connection with each product.

Product Candidate	Description/Indication	Phase of Development	Collaborator	Estimated Completion of Phase (1)	Research and Development Expenses for the Three Months Ended March 31, 2008	2007
					(in thousands)	
Daclizumab					$ 9,291	$ 7,261
	Asthma	Phase 2 program being evaluated	—	Not yet disclosed		
	Multiple sclerosis	Phase 2	Biogen Idec	Not yet disclosed		
	Transplant maintenance	Phase 2 program advancement pending partnership	—	Not yet disclosed		
Volociximab (M200)	Solid tumors	Phase 2 program ongoing partnership	Biogen Idec	2008	4,836	4,276
HuLuc63	Multiple myeloma	Phase 1	—	Not yet disclosed	11,555	3,817
PDL192	Solid tumors	IND filed; phase 1 pending	—	2008	3,082	5,451
Nuvion (visilizumab)		Terminated in August 2007			4,385	11,657
Other Program-Related Costs (2)	Multiple programs and products	—	—	—	2,619	1,539
Non-Program-Related Costs (3)	—	—	—	—	11,913	14,090
Total Research and Development Expenses					**$ 47,681**	$ 48,091

(1) The information in the column labeled “Estimated Completion of Phase” is our current estimate of the timing of completion of product development phases. The actual timing of completion of those phases could differ materially from the estimates provided in the table. The clinical development portion of these programs may span as many as seven to 10 years and any further estimation of completion dates or costs to complete would be highly speculative and subjective due to the numerous risks and uncertainties associated with developing biopharmaceutical products, including significant and changing government regulation, the uncertainty of future preclinical and clinical study results and uncertainties associated with process development and manufacturing as well as marketing.

(2) Other Program-Related Costs consist of the aggregate research and development costs for those distinct programs or products that do not individually constitute more than 5% of the total research and development expenses for the periods presented.

(3) Non-Program-Related Costs consist of the aggregate research and development costs that are not associated with any particular program or product, but rather, support our broad research and development efforts. Such costs primarily include those related to discovery of new antibody candidates and manufacturing and quality activities in support of product development activities.

General and Administrative Expenses

General and administrative expenses generally consist of costs of personnel, professional services, consulting and other expenses related to our administrative, marketing and clinical affairs functions, and an allocation of facility and overhead costs. General and administrative expenses also include

stock-based compensation expenses accounted for under SFAS No. 123(R) as a component of personnel-related costs. Total stock-based compensation expenses recognized as general and administrative expenses were $2.2 million and $1.3 million for the quarters ended March 31, 2008 and 2007, respectively.

General and administrative expenses increased by $8.4 million during the first quarter of 2008 in comparison to the same quarter in 2007. The increase was due primarily to increases in legal costs of $3.8 million, primarily related to our strategic review process and ongoing litigation, and in professional services fees of $1.0 million related to our strategic review process. In addition, in the first quarter of 2008, (1) we classified $0.9 million of facilities costs related to idle research and development capacity in our Redwood City facilities as general and administrative expenses, (2) we accrued $0.8 million in retention bonuses that were provided to our employees, (3) stock-based compensation increased by $0.4 million due to modification charges for certain stock options in connection with the termination of certain employees and (4) depreciation allocated to general and administrative expenses increased by $0.5 million as we placed into service in late 2007 leasehold improvements associated with our Redwood City facilities.

Restructuring Charges

Overall Company Restructuring

In an effort to reduce our operating costs to a level more consistent with a biotechnology company focused solely on antibody discovery and development, in March 2008, we commenced a restructuring plan pursuant to which we eliminated approximately 120 employment positions and we intend to eliminate approximately 130 additional employment positions over the next 12 months. All impacted employees were notified in March 2008. In addition, we are undertaking other substantial cost cutting measures.

Employees subject to termination are eligible for a package consisting of severance payments of generally 12 weeks of salary and medical benefits along with up to three months of outplacement services. During the first quarter of 2008, under SFAS No. 146, we recognized restructuring charges of $5.6 million consisting of post-termination severance costs.

Facilities Related Restructuring

During the third quarter of 2007, we initiated our move from Fremont, California to our new location in Redwood City, California. In connection with this move, we ceased use of a portion of the leased property in Fremont, California and, as a result, we recognized idle facilities charges during 2007. The lease on these facilities terminated at the end of first quarter of 2008 and nearly all related obligations were paid as of March 31, 2008.

In addition, during 2007, we ceased use of two of our leased facilities in Plymouth, Minnesota. In connection with the sale of our Manufacturing Assets, Genmab assumed our obligations for one of these two facilities. We expect to pay all remaining obligations accrued relating to these leases by the end of the first quarter of 2009.

The following table summarizes the restructuring activity related to continuing operations discussed above, as well as the remaining related reserve balance at March 31, 2008:

(in thousands)	Personnel Costs	Facilities Related	Total
Balance at December 31, 2007	$ 411	$ 1,912	$ 2,323
Restructuring charges	5,547	82	5,629
Payments	(377)	(1,266)	(1,643)
Balance at March 31, 2008	$ 5,581	$ 728	$ 6,309

***** Excludes restructuring charges for employees terminated in connection with the sale of our Commercial and Cardiovascular Assets. See “Discontinued Operations” for further information.

Gain on Sale of Assets

In March 2008, we completed the sale of our Manufacturing Assets to Genmab for total cash proceeds of $240 million. We recognized a pre-tax gain of $49.7 million upon the close of the sale. Such gain represents the $240 million in gross proceeds, less the value of the underlying assets of $185.4 million and $4.9 million in transaction costs and other charges. Under the terms of the purchase agreement, Genmab will provide transitional services to us over a maximum period of 12 months to support certain of our commitments that arose from the sales of the Commercial and Cardiovascular Assets as well as to support certain of our general and administrative functions.

To fulfill our manufacturing needs in the near-term, we have entered into a clinical supply agreement with Genmab that was effective upon the close of the transaction. Under the terms of the clinical supply agreement, Genmab agreed to produce clinical trial material for certain of our pipeline products until March 2010.

Asset Impairment Charges

Total asset impairment charges for the quarters ended March 31, 2008 and 2007 were $3.5 million and none, respectively. During the first quarter of 2008, such charges primarily represented the costs of certain research equipment that is expected to have no future useful life, and certain information technology projects that were terminated and have no future benefit to us as a result of our restructuring activities.

Discontinued Operations

The results of the Commercial and Cardiovascular Operations segment are reflected as discontinued operations for all periods presented. In March 2008, we completed the sales of the Commercial and Cardiovascular Assets. We sold the rights to IV *Busulfex*, including trademarks, patents, intellectual property and related assets, to Otsuka Pharmaceutical Co., Ltd. (Otsuka) for $200 million in cash and an additional $1.4 million for the IV *Busulfex* inventories. We also sold the rights to *Cardene*, *Retavase* and ularitide, including all trademarks, patents, intellectual property, inventories and related assets (together, our Cardiovascular Assets), to EKR. In consideration for the Cardiovascular Assets, we received an upfront fee of $85 million, $6 million of which was placed in an escrow account for a period of approximately one year to cover certain product return related costs under the purchase agreement. In addition, the purchase agreement includes contingent consideration of up to $85 million in future development and commercial milestone payments as well as royalties on certain future *Cardene* and ularitide product sales.

Loss from discontinued operations increased by $80.7 million, net of tax, to $91.5 million in the three months ended March 31, 2008 from $10.8 million in the prior year comparable period. This increase primarily was due to the $64.6 million pre-tax loss recognized on the sale of the Commercial and Cardiovascular assets in the first quarter of 2008 and the related tax impact of $28.0 million. This increase was partially offset by decreases in net financial operating results, which resulted principally from the absence of amortization expense from intangible assets during the first quarter of 2008 as a result of the Commercial and Cardiovascular Assets being classified as 'held for sale' on our Consolidated Balance Sheet from December 2007 until they were divested on March 7, 2008.

The $64.6 million pre-tax loss that we recognized in the first quarter of 2008 was comprised of the upfront consideration for the sales of the Commercial and Cardiovascular Assets of $280.4 million plus the write-off of $10.6 million in net liabilities, less the book values of intangible assets and inventories of $268.2 million, the write-off of goodwill of $81.7 million and transaction fees of $5.7 million.

For the periods presented below, the results of our discontinued operations are as follows:

	Three Months Ended March 31,	
(In thousands)	2008	2007
Net revenues	$ 39,359	$ 49,127
Total costs and expenses (1)	(102,807)	(59,914)
Income tax expense (2)	(28,027)	(35)
Loss from discontinued operations	$ (91,475)	$ (10,822)

(1) Included within total costs and expenses is a loss of $64.6 million that we recognized upon the close of the sale of the Commercial and Cardiovascular Assets.

(2) Income tax expense attributable to our discontinued operations during the three months ended March 31, 2008 was primarily related to the tax gain on the sale of the Commercial and Cardiovascular Assets. Although we recognized a loss on the sale of these assets for financial reporting purposes, for tax purposes, we included the fair value of the contingent consideration from EKR in our proceeds, which included potential future milestone payments as well as potential future royalties on certain *Cardene* and ularitide product sales. In addition, the tax basis in the Commercial

and Cardiovascular Assets was less than the book value recorded for financial reporting purposes. Therefore, we recognized a taxable gain and incurred alternative minimum tax on the sale of the Commercial and Cardiovascular Assets. The income tax payable attributable to our discontinued operations for the first quarter of 2008 was $6.5 million. The $21.5 million difference between the income tax payable and the income tax expense represents the tax benefit of certain tax deductions in connection with stock-based compensation, and such difference has been credited to additional paid-in capital.

In connection with the sale of the Commercial and Cardiovascular Assets, we committed to provide certain transitional services to both Otsuka and EKR. We expect to provide these transitional services over a period of approximately 12 months. Any fees received for the transitional services will be classified within discontinued operations.

Commercial Restructuring and Retention Plan

In connection with the divesture of the Commercial and Cardiovascular Assets, we committed to provide certain severance benefits to those employees whose employment positions we would eliminate as a result of these transactions. Under SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS No. 146), we recognized an expense for these severance benefits of $1.8 million during the first quarter of 2008, which were included within discontinued operations. Of this $1.8 million, $1.7 million was included in other accrued liabilities as of March 31, 2008.

During the fourth quarter of 2007, the Compensation Committee of our Board of Directors approved a modification to the existing terms of outstanding stock options held by our Commercial Employees to accelerate the vesting up to 25% of the original grant amount upon termination of the Commercial Employees if the sale of the Commercial and Cardiovascular Assets occurred prior to a change in control of the Company. During the first quarter of 2008, we recognized $2.3 million of stock-based compensation expense related to the Commercial Employees, which was included within discontinued operations.

Interest and Other Income, Net and Interest Expense

	Three Months Ended March 31,		
(in thousands)	2008	2007	% Change
Interest and other income, net	$ 4,867	$ 5,032	(3)%
Interest expense	(3,989)	(3,557)	12%
Total interest and other income, net and interest expense	$ 878	$ 1,475	(40)%

Interest income for the three months ended March 31, 2008 was relatively flat from the comparable period in 2007. Although our average cash and investment balances were higher in the first quarter of 2008 as compared to the prior year, the interest rates earned on our investments were lower.

Interest expense for the three months ended March 31, 2008 increased from the comparable period in 2007 primarily as a result of lower capitalized interest in the three months ended March 31, 2008, since we completed the construction of the Redwood City facility in the fourth quarter of 2007.

Income Taxes

Income tax expense attributable to our continuing operations during the three months ended March 31, 2008 was $1.0 million, which was related primarily to federal and state alternative minimum taxes and foreign taxes on income earned by our foreign operations. As a result of the sale of our Commercial and Cardiovascular Assets in March 2008, we no longer have deferred tax liabilities, and due to our lack of earnings history, the gross deferred tax assets have been fully offset by a valuation allowance and no longer appear on our Consolidated Balance Sheet as of March 31, 2008.

The income tax expense for our continuing operations during the three months ended March 31, 2007 was $30,000, which was related primarily to state taxes and foreign taxes on income earned by our foreign operations.

LIQUIDITY AND CAPITAL RESOURCES

To date, we have financed our operations primarily through public and private placements of equity and debt securities, royalty revenues, license revenues, collaboration and other revenues under agreements with third parties, interest income on invested capital and, from March 2005 to March 2008, net product sales. At March 31, 2008, we had cash, cash equivalents, marketable securities and restricted cash in the aggregate of $946.9 million, compared to $440.8 million at December 31, 2007.

Net cash used in operating activities for the three months ended March 31, 2008 was $29.3 million, compared to $9.1 million in the corresponding period in 2007. The increase in net cash used in operating activities during the first three months of 2008 was primarily attributable to the tax impact of the tax gains that we recognized on the sales of our Commercial and Cardiovascular Assets, lower net product sales due to the divestiture of the Commercial and Cardiovascular Assets in early March 2008 and an increase in legal expenses associated with our strategic review process and ongoing litigation. These factors that contributed to the increase in cash used in operations were partially offset by lower operating expenses as a result of the sales in early March 2008 of the Commercial and Cardiovascular Assets and the Manufacturing Assets and the related reductions in headcount, personnel costs and operating expenses (which for the Commercial and Cardiovascular Operations have been reflected as discontinued operations), and to changes in our working capital due to the timing of payments relating to cash receipts from receivables and cash payments for our liabilities.

Net cash provided by investing activities was $568.0 million for the three months ended March 31, 2008, compared to net cash used in investing activities of $30.2 million in the comparable period in 2007. The net cash provided by investing activities in the first three months of 2008 of $568.0 million was attributable primarily to net proceeds of $509.5 million received in connection with the sales of the Commercial and Cardiovascular Assets and the Manufacturing Assets and the maturing of an aggregate of $59.8 million of our short term investments and restricted cash.

Net cash provided by financing activities for the three months ended March 31, 2008 was $26.4 million, compared to $2.8 million in the comparable period in 2007. In the first quarter of 2008, the cash provided by financing activities was principally due to the excess tax benefit from stock-based compensation expense as well as proceeds from stock option exercises. In the first quarter of 2007, the cash provided by financing activities was principally due to proceeds from stock option exercises.

In April 2008, we declared a special cash dividend of $4.25 per share of common stock (the Dividend) using proceeds from the sale of the Commercial and Cardiovascular Assets and the Manufacturing Assets. Based on the number of stockholders as of the May 5, 2008 record date, the Dividend was $507.0 million.

In April 2008, we announced the Spin-off. As noted above, we expect to retain the rights to antibody humanization royalty revenues from all current and future licensed products and plan to distribute this income to our stockholders, net of any operating expenses, debt service and income taxes. Subsequent to the Spin-off, we plan to have only a nominal number of employees to support our intellectual properties and provide for certain essential reporting and management functions of a public company. We expect to capitalize the new biotechnology Spin-off company with approximately $375 million in cash at the completion of the transaction. This initial capitalization, along with potential milestone payments, non-humanization royalties and other payments under collaboration and other agreements, including the contingent consideration related to the sale of the Commercial and Cardiovascular Assets, is expected to fund the Spin-off company for approximately three years based on current operating plans. We expect to complete the Spin-off by the end of 2008. While we plan for the Spin-off, we continue to evaluate opportunities to sell or securitize all or part of our antibody humanization royalties; however, we can not assure that we will be able to consummate a sale or securitization of our antibody humanization patent royalty stream on terms acceptable to us, or at all.

In conjunction with our restructuring efforts and significant cost-cutting measures currently underway, we believe that the revenues generated from our royalties and collaboration agreements, taking into account the distribution of the Dividend totaling $507.0 million as mentioned above, will be sufficient to fund our operations over the next year and the foreseeable future. If and after we consummate the Spin-off, we believe that the revenues generated from our royalties will be sufficient to fund our operations into the foreseeable future. As noted above, we will continue to evaluate opportunities to sell or securitize all or part of our antibody humanization royalties, although we cannot assure that we will be able to consummate such a sale or securitization on terms acceptable to us or at all. Our future capital requirements will depend on numerous factors, as described below, and the sale of another or all of our key assets could fundamentally change how we fund our operations. Such factors that impact our future capital requirements include, among others, royalties from sales of products by third-party licensees, including *Avastin*, *Herceptin*, *Lucentis*, *Mylotarg*, *Raptiva*, *Synagis*, *Tysabri*

and *Xolair*; interest income; and the costs of and outcome defending or prosecuting any patent opposition or litigation necessary to protect our proprietary technology. Our future capital requirements also will depend on, among other factors our ability to enter into additional collaborative, humanization, patent license and patent rights agreements; 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 collaborators 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; our ability to obtain and retain funding from third parties under collaborative arrangements; the demand for our potential products, if and when

approved; and potential acquisitions of technology, product candidates or businesses by us. However, if and after we consummate the Spin-off, the factors identified in the preceding sentence would no longer impact our capital requirements. In addition to the foregoing, the sale or securitization of all or part of our antibody humanization patent royalty stream could fundamentally change how we fund our operations. In order to develop and commercialize our potential products we or the Spin-off company 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 would be available on acceptable terms, if at all, and such financing may only be available on terms dilutive to existing stockholders.

Our material contractual obligations under lease, debt, construction, contract manufacturing and other agreements as of March 31, 2008 were as follows:

	1 Year	1-3 Years	4-5 Years	5 Years	Total
CONTRACTUAL OBLIGATIONS					
Operating leases	$ 3,926	$ 7,351	$ 6,963	$ 62,461	$ 80,701
Convertible notes	11,875	273,748	252,500	—	538,123
Contract manufacturing	7,740	12,500	—	—	20,240
Other liabilities (1)	4,976	7,318	7,824	44,271	64,389
Total contractual obligations	$ 28,517	$ 300,917	$ 267,287	$ 106,732	$ 703,453

(1) Includes lease payments related to certain of our facilities in Redwood City, California, a milestone payment due to one of our licensors and post-retirement benefit obligations.

In addition to the amounts disclosed in the table above, we have committed to make payments for certain retention and severance related benefits. See Notes 5 and 7 to the Consolidated Financial Statements for further details. Further, we have committed to make potential future “milestone” payments to third parties as part of in-licensing and product development programs. Payments under these agreements generally become due and payable only upon achievement of certain clinical development, regulatory and/or commercial milestones. Because the achievement of these milestones has not yet occurred, such contingencies have not been recorded in our Consolidated Balance Sheet as of March 31, 2008. We estimate that such milestones that could be due and payable over the next year approximate $2 million and milestones that could be due and payable over the next three years approximate $4 million.

In addition, in connection with the sale of the Cardiovascular Assets to EKR and under certain circumstances, we may be required to reimburse EKR for the cost of certain Retavase manufacturing obligations during 2008, not to exceed $2.5 million.

RISK FACTORS

You should carefully consider and evaluate all of the information included and incorporated by reference in this Quarterly Report, including the risk factors listed below. Any of these risks, as well as other risks and uncertainties, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price of shares of our common stock. Additional risks not currently known to us may also harm our business.

Keep these risk factors in mind when you read forward-looking statements contained in this Quarterly Report and the documents incorporated by reference in this Quarterly Report. These statements relate to our expectations about future events and time periods. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “intends,” “plans,” “believes,” “anticipates,” “expects,” “estimates,” “predicts,” “potential,” “continue” or “opportunity,” the negative of these words or words of similar import. Similarly, statements that describe our reserves and our future plans, strategies, intentions, expectations, objectives, goals or prospects are also forward-looking statements. Forward-looking statements involve risks and uncertainties, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements.

We have ended our solicitation of interest in the Company and its assets, other than our humanization royalty stream assets, and have undertaken to restructure the Company, which could distract our management and employees, disrupt operations, make more difficult our ability to attract and retain key employees and cause other difficulties.

From October 2007 until March 2008, we pursued a process to solicit interest in the purchase of the Company or our key assets, including the Commercial and Cardiovascular Assets and humanization royalty stream assets. In March 2008, we announced the end of this process and that we would focus on discovering and developing innovative antibodies for cancer and immunologic diseases. In April 2008, we decided to separate our antibody humanization royalty assets from our biotechnology operations by spinning off our biotechnology assets into a separate publicly traded entity.

In an effort to reduce operating costs to a level more consistent with a biotechnology company focused solely on antibody discovery and development, in March 2008, we commenced a restructuring pursuant to which we eliminated approximately 120 employment positions. We intend to eliminate approximately 130 additional employment positions over the next 12 months. Many of these positions support our provision of transition services to Otsuka, EKR and Genmab in connection with our sale of assets to these parties. We offered these 120 transition employees and the employees that we expect to retain after the restructuring retention bonuses and other incentives to encourage these employees to stay with the Company. The disruption, anxiety and uncertainty caused by our restructuring could cause employees to seek other employment opportunities notwithstanding the retention incentives we have implemented. The loss of personnel during this period could disrupt operations and adversely impact our ability to perform the transition services we are obligated to perform for Otsuka, EKR and Genmab.

This disruption and uncertainty may also make the recruitment of key personnel more difficult. We are currently engaged in a search for a new Chief Executive Officer, and the disruption and uncertainty caused by our restructuring may make such recruitment more difficult. The failure to recruit a new Chief Executive Officer could adversely impact our future performance or our plans for the timing of future transactions.

Our restructuring efforts may continue to divert the attention of our management and employees away from our operations, harm our reputation and increase our expenses. We cannot assure you that we will not undertake additional restructuring activities, that any of our restructuring efforts will succeed, or that we will be able to realize the cost savings and other anticipated benefits from our restructuring plans or that we will successfully spin off our biotechnology assets.

In addition, employees whose positions we will eliminate in connection with this reduction may seek employment with our competitors. Although all employees are required to sign a confidentiality agreement with us at the time of hire, we cannot provide assurance that the confidential nature of our proprietary information will be maintained in the course of such future employment.

We have decided to separate our antibody humanization royalty assets from our biotechnology operations by spinning off our biotechnology assets into a separate publicly traded entity, the process for which may divert the attention of our management and employees, will increase our professional services expenses, may disrupt our operations and is subject to other risks.

In April 2008, we announced that we had decided to separate our antibody humanization royalty assets from our biotechnology operations by spinning off our biotechnology assets into a separate publicly traded entity and that we expected to complete this separation by the end of 2008. Our ability to timely effect the Spin-off is subject to the completion of numerous tasks, including the preparation of carve-out audited financial statements for our biotechnology operations, the completion of required regulatory filings and obtaining the consent of third parties to the transfer of contractual rights to the Spin-off entity. The failure to obtain necessary consents from third parties to the transfer of contractual rights in the Spin-off could delay or make impractical our plan to effect a Spin-off of our biotechnology assets.

The process to plan for and effect the Spin-off of our biotechnology assets will demand a significant amount of time and effort from our management and employees. The diversion of our management's and employees' attention to the Spin-off process may disrupt our operations, including by adversely impacting the progress of our discovery and development efforts and our relationships with collaborators.

We expect to initially fund the biotechnology Spin-off with $375 million in cash. We expect that this initial capitalization, along with potential milestone payments, non-humanization royalties and other payments under collaboration and other agreements, including the contingent consideration related to our sale of our Cardiovascular Assets would fund the biotechnology Spin-off for approximately three years based on current operating plans. Changes in our development or operations plans, however, could affect the initial cash funding needed to adequately capitalize the biotechnology entity.

We will incur significant expenditures for professional services in connection with our planning and implementation of the Spin-off, including for legal and accounting services.

We may not receive the contingent consideration related to the sale of our Cardiovascular Assets.

In March 2008, we sold our Cardiovascular Assets to EKR for $85 million in cash at closing, and up to an additional $85 million in development and sales milestones, as well as royalty payments. Receipt of these milestone and royalty payments is dependent upon certain contingencies, including the receipt of marketing approval from the FDA for a new formulation of Cardene and future net sales of this new formulation. We cannot assure you that these development and sales milestones will be met and that we will be able to receive any of the additional $85 million in milestone payments and any of the royalty payments based on future net sales.

We may not be able to consummate a transaction to sell or securitize the value of our antibody humanization patent royalty stream received from currently marketed licensed products.

The sale or securitization of our antibody patent royalty stream is uncertain and the conclusion of any transaction or structure leading to such a transaction would be subject to numerous conditions including potential negotiation with third parties, market conditions and determination of the final form. We may not be able to consummate a transaction relating to our antibody humanization patent royalty stream on terms acceptable to us, or at all. The consummation of any transaction or structure relating to the royalty stream, even if on acceptable terms, could be adversely impacted or prevented by failure to satisfy closing conditions or regulatory delays.

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

In general, our expenses have exceeded our revenues. As of March 31, 2008, we had an accumulated deficit of $653.2 million. We expect our operating expenses in the near term to decrease significantly relative to expense levels during 2005 to 2007 because we have divested the Commercial and Cardiovascular Assets we formerly held and have undertaken a significant restructuring and reduction in force. We will, however, incur a significant amount of restructuring costs through 2008, including severance payments to terminated employees and additional costs and retention incentives to retained employees. After these divestitures and our restructuring are complete, operating expenses may increase on average if we are successful in advancing potential products in clinical trials primarily because of the extensive resource commitments required to achieve regulatory approval.

Since we or our collaborators or licensees may not successfully develop additional products, obtain required regulatory approvals, manufacture products at an acceptable cost or with appropriate quality, or successfully market such products with desired margins, our expenses may continue to exceed our revenues. 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:

- our earlier stage potential products move into later stage clinical development, which is generally a more expensive stage of development;
- additional pre-clinical product candidates are selected for further clinical development;
- we pursue clinical development of our potential products in new indications;
- we increase the number of patents we are prosecuting;
- we expend additional resources to defend our patents;
- we invest in research or acquire additional technologies, product candidates or businesses; and
- we increase our capital expenditures as we improve our research, development and other facilities and as a result also record higher depreciation expenses.

In the absence of substantial revenues from licensing and other revenues from third-party collaborators, royalties on sales of products licensed under our intellectual property rights or other sources of revenues, we will continue to incur operating losses and may require additional capital to fully execute our business strategy. The likelihood of reaching and time required to reach sustained profitability are highly uncertain.

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

Our revenues and revenue growth 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. In particular, because we have divested the Commercial and Cardiovascular Assets, sales of which constituted 40% and 44% of our total revenues (including discontinued operations) in 2006 and 2007, respectively, we expect our revenues to decline significantly in the near term. Antibody humanization royalties constituted 74% and 85% of our revenues from continuing operations in 2006 and 2007, respectively. We continue to evaluate the possible sale or securitization of our antibody humanization royalties, either before or after our planned Spin-off of our biotechnology assets, and distribution of proceeds from such a sale or securitization to stockholders. Any sale of our antibody humanization royalties would decrease our revenue while a securitization of our antibody humanization royalties would increase our expenses as we would become obligated to make periodic principal and interest payments. Our antibody humanization royalty revenues, even after any potential sale or securitization, may be unpredictable and fluctuate since they depend upon:

- the seasonality and rate of growth of sales of existing and licensed products;
- the mix of U.S.-based Sales and ex-U.S.-based Sales in connection with our master patent license agreement with Genentech;
- the existence of competing products;
- the continued safety of approved licensed products;
- the marketing and promotional efforts of our licensees from whom we receive royalty payments;
- our ability to successfully defend and enforce our patents; and
- the timing of milestone payments, licensing and signing fees and completion of manufacturing, development or other services we must pay or that we may receive under licensing, collaboration and royalty arrangements.

We receive a significant portion of our royalty revenues from sales of *Synagis*, which is marketed by MedImmune. This product has significantly 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 is expected to continue to contribute to fluctuation in our revenues from quarter to quarter.

Additionally, our master patent license agreement with Genentech provides for a royalty fee structure that has four tiers, under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and sold anywhere (U.S.-based Sales) in a given calendar year decreases on incremental U.S.-based Sales above the net sales thresholds. As a result, Genentech's average annual royalty rate declines as Genentech's U.S.-based Sales increase. Because we receive royalties in arrears, the average royalty rate for the payments we receive from Genentech in the second calendar quarter, which would be for Genentech's sales from the first calendar quarter, is higher than the average royalty rate for following quarters and is lowest in the first calendar quarter when more of Genentech's U.S.-based Sales bear royalties at lower royalty rates. The average royalty rate for payments we receive from Genentech is lowest in the first calendar quarter of each year, which would be for Genentech's sales from the fourth calendar quarter from the preceding year, when more of Genentech's U.S.-based Sales bear royalties at lower royalty rates. With respect to Genentech's royalty-bearing products that are both manufactured and sold outside of the United States (ex-U.S.-based Sales), the royalty rate that we receive from Genentech is a fixed rate based on a percentage of the underlying ex-U.S.-based Sales. The mix of U.S.-based Sales and ex-U.S.-based Sales and the manufacturing location are outside of our control and have fluctuated in the past and may continue to fluctuate in future periods.

The recognition of license, collaboration and other revenues that we otherwise would defer and recognize over a period of time under applicable accounting principles may be accelerated in certain circumstances. For example, if a licensee of ours terminates a development program for which we received an upfront non-refundable fee that required our ongoing performance, the recognition of the revenues would be accelerated and recognized in the period in which the termination occurred. In such a case, it may cause our revenues during that period to be higher than it otherwise would have been had the circumstances not occurred. For example, during the third quarter of 2006 we recognized $18.8 million of deferred revenue, or 17% of the total revenues for that quarter, related to Roche's election in August 2006 to discontinue its co-development of daclizumab in treating asthma and other respiratory diseases.

Our expenses may be unpredictable and may fluctuate from quarter to quarter due to the timing and the unpredictable nature of clinical trial and related expenses, including payments owed by us and to us under collaborative agreements for reimbursement of expenses and which we record during the quarter in which such expenses are reported to us or to our collaborators and agreed to by us or our collaborators. Moreover, the underlying terms of in-licensing and royalty arrangements, especially those with tiered payment structures, will impact the timing of costs and expenses recognized during any particular quarter. In addition, the recognition of clinical trial and other expenses that we otherwise would recognize over a period of time under applicable accounting principles may be accelerated in certain circumstances. In such a case, it may cause our expenses during that period to be higher than they otherwise would have been had the circumstances not occurred. For example, if we terminate a clinical trial for which we paid non-refundable upfront fees to a clinical research organization and in which we did not accrue all of the patient costs, the recognition of the expense associated with those fees that we were recognizing as we accrued patient costs would be accelerated and recognized in the period in which the termination occurred.

We face significant competition.

We face significant competition from entities with substantially greater resources than we do, more experience and capabilities in the discovery and development of pharmaceuticals and superior personnel resources. Potential competitors in the United States and other countries include major pharmaceutical and chemical companies, specialized pharmaceutical companies and biotechnology firms, universities and other research institutions. These entities have developed and are developing human and humanized antibodies or other compounds for treating autoimmune and inflammatory diseases, asthma and cancers and technologies that may compete with our antibody technology platform. These 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 products may also face significant competition from both brand-name and generic manufacturers that could adversely affect the future sales of our products.

Any product that our collaborators or we 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 collaborators 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.

Changes in the U.S. and international health care industry, including regarding reimbursement rates, could adversely affect the commercial value of our development products.

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. The FDA and other health care policies may change, and additional government regulations may be enacted, which could prevent or delay regulatory approval of our product candidates. 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 payers may challenge the price and cost effectiveness of our products. In addition, in many major markets outside the United States, pricing approval is required before sales may 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 the products we develop. Any product we introduce 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 obtain or maintain prices sufficient to realize an appropriate return on our investment in product development, should any of our development products be approved for marketing. Also, the trend towards managed health care in the United States 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 development products. These factors will also affect the products that are marketed by our collaborators and licensees. We cannot predict the likelihood, nature or extent of adverse government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are not able to maintain regulatory compliance, we might not be permitted to market our future products and our business could suffer.

Our antibody humanization patents, which are of significant value to us, are being challenged and a successful challenge or refusal to take a license could limit our future revenues.

Our Queen patents are of significant value to us. Royalty revenues received under agreements for the license of rights under our Queen patents accounted for 82% of revenues from continuing operations in 2005, 74% of revenues from continuing operations in 2006 and 85% of revenues from continuing operations in 2007. We expect that these royalty revenues will constitute the vast majority of our revenues now that we have completed the divestiture of the commercial products. We expect that we will continue to experience aggregate royalty revenue growth based on the assumed continued growth in aggregate product sales underlying our royalty revenues and that these royalty revenues will continue to represent the majority of our total revenues until our Queen patents expire in 2014. We continue to evaluate the possible sale or securitization of our antibody humanization royalties, either before or after our planned Spin-off of our biotechnology assets, and distribution of the proceeds from such a sale or securitization to stockholders. Any sale of our antibody humanization royalties would decrease our revenue while a securitization of our antibody humanization royalties would increase our expenses as we would become obligated to make periodic principal and interest payments.

Two of our Queen patents were issued to us by the European Patent Office, European Patent No. 0 451 216 (the ‘216 Patent) and European Patent No. 0 682 040 (the ‘040 Patent). Eighteen notices of opposition to our ‘216 Patent and eight notices of opposition to our ‘040 Patent were filed by major pharmaceutical and biotechnology companies, among others, and we are currently in two separate opposition proceedings with respect to these two patents. Although six opponents, including Genentech, have withdrawn from the opposition proceedings with respect to the opposition to our ‘216 Patent, 12 opponents to this patent remain. In addition, although the Opposition Division upheld claims in our ‘216 Patent in April 2007 that are virtually identical to the claims remitted by the Technical Board of Appeal to the Opposition Division, the opponents in this opposition have the right to appeal the Opposition Division’s recent decision and this proceeding has not yet concluded. A description of both opposition proceedings is included under the heading “Legal Proceedings” in Part II, Item 1 of this Quarterly Report. If our patents are successfully opposed in either of these two proceedings or third parties decline to take licenses to our Queen patents, our future revenues would be adversely affected. For example, if the opponents in the proceeding regarding our ‘216 Patent are successful, our ability to collect royalties on European sales of antibodies humanized by others would depend on: (i) the scope and validity of our ‘040 Patent; and (ii) whether the antibodies are manufactured in a country outside of Europe where they are covered by one or more of our patents and, if so, on the terms of our license agreements.

In addition, until the opposition proceedings are resolved, we may be limited in our ability to collect royalties or to negotiate future license agreements based on our Queen patents. An adverse decision by the Opposition Division could encourage challenges to our related Queen patents in other jurisdictions, including the United States. Such a 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 proceedings to enforce our rights under our Queen patents. In such a situation, a likely defensive strategy to our action would be to challenge our patents in that jurisdiction. During the opposition process with respect to our ‘216 Patent, if we were to commence an infringement action in Europe to enforce that patent, such an action would likely be stayed until the opposition 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. patents.

Although we intend to vigorously defend the European patents in these two proceedings, we may not prevail in either of these opposition proceedings or any litigation contesting the validity of these patents. For example, our Japanese humanization patent, which was issued in September 1998, was opposed and eventually revoked by the Japanese Patent Office in March 2001. Although we appealed the Japanese Patent Office’s revocation of this patent, the Tokyo High Court upheld the revocation of the patent and, in December 2004, the Japanese Supreme Court denied our petition for review of the Tokyo High Court’s

decision. The decision by the Japanese Supreme Court concluded the proceedings in the matter and the Japanese Patent Office's decision to revoke our patent is final and nonappealable.

If the outcome of either of the European 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.

Our ability to maintain and increase our revenues from licensing our Queen patents is dependent upon third parties entering into new patent licensing arrangements, exercising rights under existing patent rights agreements, paying royalties under existing patent licenses with us and not terminating those existing licenses with us. To date, with the exception of Alexion Pharmaceuticals, Inc. (Alexion), we have succeeded in obtaining and maintaining such licensing arrangements, and in receiving royalties on product sales, from parties whose products may be covered by our patents. However, there can be no assurance that we will continue to succeed in our licensing efforts in the future. In the past, we have experienced challenges in our licensing efforts, such as the disagreement we had with Genentech in 2003 over whether its *Xolair* antibody was covered under our humanization patents. Although we subsequently reached an amicable settlement with Genentech that is intended to resolve such disagreements, Genentech or other companies may, in the future not enter into or terminate their licensing agreements with us, or seek to challenge our U.S. patents through litigation or patent office proceedings, such as re-examinations or interferences. More recently, in March 2007, the FDA approved Alexion's Soliris™ (eculizumab) humanized antibody product for marketing and we filed a lawsuit against Alexion seeking monetary damages for infringement of certain of certain claims of our Queen patents and other relief. In June 2007, Alexion filed an answer denying that its *Soliris* product infringes our patents, asserting certain defenses and counterclaiming for non-infringement and invalidity, and thereafter amended its answer to include a defense of unenforceability. In July 2007, the discovery stage of this litigation began and discovery is ongoing. We intend to vigorously assert our rights under the patents-in-suit and defend against Alexion's counterclaims. If we experience difficulty in enforcing our patent rights through licenses, or if our licensees, or prospective licensees, challenge our antibody humanization patents, our revenues and financial condition could be adversely affected, and we could be required to undertake additional actions, including litigation, to enforce our rights. Such efforts would increase our expenses and could be unsuccessful.

The amount of royalty revenues we receive depends on, among other things, the efforts and successes of our licensees.

The amount and timing of any royalties we may receive from our licensees will depend, in part, on the product development and marketing efforts and successes of our licensees. Our licensees may not successfully complete the product development, regulatory and marketing efforts required to sell royalty-bearing products. Competition from other products or therapies could adversely affect sales of our licensees' products. In addition, even if a licensee receives regulatory approval to sell a drug on which we would receive royalties, the licensee or a regulatory agency, such as the FDA, could terminate or suspend the marketing of the drug as a result of safety or other events. For example, in February 2005, Biogen Idec and Elan announced that they had voluntarily suspended the marketing and commercial distribution of the *Tysabri* antibody, a drug approved to treat MS and which is licensed under our humanization patents, because Biogen Idec and Elan had received reports of cases of progressive multifocal leukoencephalopathy (PML), a rare and frequently fatal, demyelinating disease of the central nervous system, in certain patients treated with *Tysabri* antibody. In July 2006, Biogen Idec and Elan reintroduced the *Tysabri* antibody, however, the *Tysabri* antibody's label now includes prominent warnings regarding the *Tysabri* antibody's risks and Biogen Idec and Elan implemented a risk management plan to inform physicians and patients of the benefits and risks of *Tysabri* antibody treatment and to minimize the risk of PML potentially associated with *Tysabri* antibody monotherapy.

We must protect our patent and other intellectual property rights to succeed.

Our success is dependent in significant part on our ability to develop and protect patent and other intellectual property rights and operate without infringing the intellectual property rights of others.

Our pending patent applications may not result in the issuance of valid patents or the claims and claim scope of 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 that does not infringe our patent rights. 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 have claims that could prevent the issuance of patents to us or result in a significant reduction in the claim scope of our issued patents. In addition, patent applications are confidential for a period of time after filing. We therefore may not know that a competitor has filed a patent application covering subject matter similar to subject matter in one of our patent applications or that we were the first to invent the innovation we seek to patent. This may lead to disputes including interference proceeding or litigation to determine rights to patentable subject matter. These disputes are often expensive and may result in our being unable to patent an innovation.

The scope, enforceability and effective term of patents can be highly uncertain and often involve complex legal and factual questions and proceedings. 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. 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 in claim scope could reduce our ability to negotiate or collect royalties or to negotiate future collaborative research and development agreements based on these patents. Moreover, the issuance of a patent in one country does not assure the issuance of a patent with similar claim scope 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 that 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 need to obtain patent licenses from others in order to manufacture or sell our potential products and we may not be able to obtain these licenses on terms acceptable to us or at all.

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 may need 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 we may not be able to market our products at all.

For example, the European Patent Office (EPO) granted Celltech Therapeutics Limited (Celltech), which UCB Group acquired, a patent covering humanized antibodies, which we have opposed. At an oral hearing in January 2005, the Opposition Division of the European Patent Office revoked this patent. Celltech has appealed this decision. The appeal was dismissed by the Technical Board of Appeal of the European Patent Office at an oral hearing in March 2008 and the patent remains revoked. Also, we do not know whether the EPO will grant Celltech a patent on a pending divisional 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 its European patent. In addition, Celltech was recently issued a second U.S. patent with claims that may be considered broader than its first U.S. 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, which rights may be exercised under the agreement through December 2014. Notwithstanding this agreement, if our humanized antibodies were covered by Celltech's European or U.S. patents and if we need more than the three licenses under those patents currently available to us under the agreement, we would need to negotiate additional licenses under those patents or 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 a Celltech U.S. patent application conflicts 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.

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, Centocor, under this patent. If our processes were found to be covered by either of these patents, we might need 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 or at all.

We do not have licenses to issued U.S. patents which may cover one of our development-stage products. If we successfully develop this product, we might need to obtain licenses to these patents to commercialize the product. In the event that we need to obtain licenses to these patents, we may not be able to do so on acceptable terms or at all.

If our collaborations are not successful or are terminated by our collaborators, we may not effectively develop and market some of our products.

We have agreements with pharmaceutical and other companies to develop, manufacture and market certain of our potential products. In some cases, we rely on our collaborators to manufacture such products and essential components for those

products, design and conduct clinical trials, compile and analyze the data received from these trials, obtain regulatory approvals and, if approved, market these licensed products. As a result, we may have limited or no control over the manufacturing, development and marketing of these potential products and little or no opportunity to review the clinical data prior to or following public announcement. In addition, the design of the clinical studies may not be sufficient or appropriate for regulatory review and approval and we may have to conduct further studies in order to facilitate approval.

In September 2005, we entered into a collaboration agreement with Biogen Idec under which Biogen Idec became our collaborator on the development of daclizumab in certain indications, including MS, and volociximab (M200) in all indications. This agreement is particularly important to us. The collaboration agreement provides significant combined resources for the development, manufacture and potential commercialization of covered products. We and Biogen Idec each assume certain responsibilities and share expenses. Because of the broad scope of the collaborations, we are particularly dependent upon the performance by Biogen Idec of their obligations under the agreement. The failure of Biogen Idec to perform their obligations, our failure to perform our obligations, our failure to effectively manage the relationship, or a material contractual dispute between us and Biogen Idec would have a material adverse effect on our prospects or financial results. Moreover, our financial results depend in substantial part upon our efforts and related expenses for these programs. Our revenues and expenses recognized under the collaboration will vary depending on the work performed by us and Biogen Idec in any particular reporting period.

The arrangement with Roche pursuant to which we were co-developing daclizumab for asthma and transplant maintenance was also particularly important to us. In 2006, however, Roche decided to first discontinue its involvement in the co-development of daclizumab in treating asthma and then later to discontinue its co-development of daclizumab in transplant maintenance and terminate the Roche Co-Development Agreement effective in May 2007.

We rely on other collaborators, such as clinical research organizations, medical institutions and clinical investigators, including physician sponsors, to conduct nearly all of our clinical trials, including recruiting and enrolling patients in the trials. If these parties do not successfully carry out their contractual duties or meet expected deadlines, we may be delayed or may not obtain regulatory approval for or commercialize our product candidates. If any of the third parties upon whom we rely to conduct our clinical trials do not comply with applicable laws, successfully carry out their obligations or meet expected deadlines, our clinical trials may be extended, delayed or terminated.

If the quality or accuracy of the clinical data obtained by third party contractors is compromised due to their failure to adhere to applicable laws, our clinical protocols or for other reasons, we may not obtain regulatory approval for or successfully commercialize any of our product candidates. If our relationships with any of these organizations or individuals terminates, we believe that we would be able to enter into arrangements with alternative third parties. However, replacing any of these third parties could delay our clinical trials and could jeopardize our ability to obtain regulatory approvals and commercialize our product candidates on a timely basis, if at all.

Our collaborators can terminate our collaborative agreements under certain conditions, and in some cases 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. For example, in August 2006, following a portfolio review at Roche, Roche elected to discontinue its involvement in the development of daclizumab in treating asthma and other respiratory diseases in accordance with the terms of the collaboration agreement we had with Roche, and in November 2006, Roche elected to terminate the entire collaboration agreement. Even if a collaborator continues to contribute to the arrangement, it may nevertheless decide 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 collaborators will depend on the continued timely achievement of our research and development objectives, the retention of key personnel performing work under those agreements and on each collaborator's own financial, competitive, marketing and strategic capabilities and priorities. These considerations include:

- the commitment of each collaborator's management to the continued development of the licensed products or technology;
- the relationships among the individuals responsible for the implementation and maintenance of the development efforts; and
- the relative advantages of alternative products or technology being marketed or developed by each collaborator 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 relationships 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 agreements.

In addition, our collaborators may independently develop products that are competitive with products that we have licensed to them. This could reduce our revenues under our agreements with these collaborators.

If our research and development efforts are not successful, we may not be able to effectively develop new products.

We are engaged in research activities intended to, among other things, identify antibody product candidates that we may progress into clinical development. These research activities include efforts to discover and validate new targets for antibodies in our areas of therapeutic focus. We obtain new targets through our own drug discovery efforts and through in-licensing targets from institutions or other biotechnology or pharmaceutical companies. Our success in identifying new antibody product candidates depends upon our ability to discover and validate new targets, either through our own research efforts, or through in-licensing or collaborative arrangements. In order to increase the possibilities of identifying antibodies with a reasonable chance for success in clinical studies, part of our business strategy is to identify a higher number of potential targets than we expect to be able to progress through clinical development.

Our antibody product candidates are in various stages of development and many are in an early development stage. If we are unsuccessful in our research efforts to identify and obtain rights to new targets and generate antibody product candidates that lead to the required regulatory approvals and the successful commercialization of products, our ability to develop new products could be harmed.

To supplement our own research efforts, from time to time we may in-license or otherwise acquire from others rights to products in-development or early-stage technology. Acquiring rights to products in this manner poses risks, including because we may not be unable to successfully integrate the research, development and commercialization capabilities necessary to bring these products to market.

The failure to gain market acceptance of our product candidates among the medical community would adversely affect our revenue.

Even if approved, our product candidates may not gain market acceptance among physicians, patients, third-party payers and the medical community. We may not achieve market acceptance even if clinical trials demonstrate safety and efficacy and we obtain the necessary regulatory and reimbursement approvals. The degree of market acceptance of any product candidates that we develop will depend on a number of factors, including:

- establishment and demonstration of clinical efficacy and safety;
- cost-effectiveness of our product candidates;
- their potential advantage over alternative treatment methods;
- reimbursement policies of government and third-party payers; and
- marketing and distribution support for our product candidates, including the efforts of our collaborators where they have marketing and distribution responsibilities.

Physicians will not recommend our products until clinical data or other factors demonstrate the safety and efficacy of our product as compared to conventional drug and other treatments. Even if we establish the clinical safety and efficacy of our product candidates, physicians may elect not to use our product for any number of other reasons, including whether the mode of administration of our products is effective for certain indications. Antibody products, including our product candidates as they would be used for certain disease indications, are typically administered by infusion or injection, which requires substantial cost and inconvenience to patients. Our product candidates, if successfully developed, may compete with a number of drugs and therapies that may be administered more easily. The failure of our product candidates to achieve significant market acceptance would materially harm our business, financial condition and results of operations.

The clinical development of drug products is inherently uncertain and expensive and subject to extensive government regulation.

Our future success depends in large part upon the success of our clinical development efforts. Clinical development, however, is a lengthy, time-consuming and expensive process and subject to significant risks of failure. In addition, we must expend significant amounts to comply with extensive government regulation of the clinical development process.

Before obtaining regulatory approvals for the commercial sale of any products, we must demonstrate through preclinical testing and clinical trials that our product candidates are safe and effective for their intended use in humans. We have incurred and will continue to incur substantial expense for, and we have devoted and expect to continue to devote a significant amount of time to, preclinical testing and clinical trials. Despite the time and expense incurred, our clinical trials may not adequately demonstrate the safety and effectiveness of our product candidates.

Completion of clinical development generally takes several years or more. The length of time necessary to complete clinical trials and submit an application for marketing and manufacturing approvals varies significantly according to the type, complexity and intended use of the product candidate and is difficult to predict. Further, we, the FDA, European Medicines Agency (EMEA), investigational review boards or data safety monitoring boards may decide to temporarily suspend or permanently terminate ongoing trials. Failure to comply with extensive regulations may result in unanticipated delay, suspension or cancellation of a trial or the FDA's or EMEA's refusal to accept test results. As a result of these factors, we cannot predict the actual expenses that we will incur with respect to preclinical or clinical trials for any of our potential products, and we expect that our expense levels will fluctuate unexpectedly in the future. Despite the time and expense incurred, we cannot guarantee that we will successfully develop commercially viable products that will achieve FDA or EMEA approval or market acceptance, and failure to do so would materially harm our business, financial condition and results of operations.

Early clinical trials such as phase 1 and 2 trials generally are designed to gather information to determine whether further trials are appropriate and, if so, how such trials should be designed. As a result, data gathered in these trials may indicate that the endpoints selected for these trials are not the most relevant for purposes of assessing the product or the design of future trials. Moreover, success or failure in meeting such early clinical trial endpoints may not be dispositive of whether further trials are appropriate and, if so, how such trials should be designed. We may decide, or the FDA may require us, to make changes in our plans and protocols. Such changes may relate, for example, to changes in the standard of care for a particular disease indication, comparability of efficacy and toxicity of potential drug product where a change in the manufacturing process or manufacturing site is proposed, or competitive developments foreclosing the availability of expedited approval procedures. We may be required to support proposed changes with additional preclinical or clinical testing, which could delay the expected time line for concluding clinical trials.

Larger or later stage clinical trials may not produce the same results as earlier 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. For example, in August 2007, we announced that we would terminate the phase 3 program of our *Nuvion*® (visilizumab) antibody in intravenous steroid-refractory ulcerative colitis because data from treated patients showed insufficient efficacy and an inferior safety profile in the visilizumab arm compared to IV steroids alone.

Even when a drug candidate shows evidence 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.

In addition, we may not be able to successfully commence and complete all of our planned clinical trials without significant additional resources and expertise because we have a relatively large number of potential products in clinical development. The approval process takes many years, requires the expenditure of substantial resources, and may involve post-marketing surveillance and requirements for post-marketing studies. The approval of a product candidate may depend on the acceptability to the FDA of data from our clinical trials. Regulatory requirements are subject to frequent change. Delays in obtaining regulatory approvals may:

- adversely affect the successful commercialization of any drugs that we develop;
- impose costly procedures on us;
- diminish any competitive advantages that we may attain; and
- adversely affect our receipt of revenues or royalties.

In addition, we may encounter regulatory delays or failures of our clinical trials as a result of many factors, all of which may increase the costs and expense associated with the trial, including:

- changes in regulatory policy during the period of product development;
- delays in obtaining sufficient supply of materials to enroll and complete clinical studies according to planned timelines;
- delays in obtaining regulatory approvals to commence a study;
- delays in identifying and reaching agreement on acceptable terms with prospective clinical trial sites;
- delays in the enrollment of patients;
- lack of efficacy during clinical trials; or
- unforeseen safety issues.

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.

We may be unable to enroll a sufficient number of patients in a timely manner in order to complete our clinical trials.

The rate of completion of clinical trials 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, including those in clinical development;
- 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 result in our being unable to successfully achieve our projected development timelines, or potentially even lead us to consider the termination of ongoing clinical trials or development of a product for a particular indication.

We must attract and retain highly skilled employees in order to succeed.

To be successful, we must attract and retain qualified clinical, scientific, management and other personnel and we face significant competition for experienced personnel. If we are unsuccessful in attracting and retaining qualified personnel, particularly at the management level, our business could be impaired. The uncertainty caused by the strategic review and asset sales processes and restructuring we have recently undertaken has created anxiety among our employees. We believe this has caused attrition to increase because of employees' uncertainty regarding the continuation of employment. We have put in place certain severance and retention programs in an effort to mitigate the number of voluntary terminations, however, our programs may not provide effective incentive to employees to stay with us.

The uncertainly may also make the recruitment of highly skilled personnel more difficult. We are currently engaged in a search for a new Chief Executive Officer, and the disruption and uncertainty caused by our restructuring and plan to spin off our biotechnology assets may make such recruitment more difficult. The failure to recruit a new Chief Executive Officer could adversely impact our future performance.

Pursuant to rules adopted under the Sarbanes-Oxley Act of 2002, we must evaluate the effectiveness of our disclosure controls and internal control over financial reporting on a periodic basis, publicly disclose the results of these evaluations and publicly disclose whether we have implemented any changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Our management is required to periodically evaluate the effectiveness of our disclosure controls and procedures and our internal control over financial reporting and our independent registered public accounting firm must attest to the effectiveness of our internal control over financial reporting as of the end of each fiscal year. We are also required to disclose in our periodic reports with the SEC any changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Our evaluation of our disclosure controls and procedures may reveal material weaknesses in our internal control over financial reporting. If we identify a material weakness we would be required to conclude that our internal control over financial reporting is ineffective and disclose this conclusion, which could adversely affect the market price of our common stock. For example, we disclosed we had material weaknesses in our quarterly reports on Form 10-Q for the periods ended September 30, 2005, June 30, 2007, September 30, 2007 and March 31, 2008 and our annual report on Form 10-K for the year ended December 31, 2007.

In addition, the rules governing the standards that must be met for management to assess the effectiveness of our internal control over financial reporting are complex and require significant documentation, testing and possible remediation. Compliance with these rules has resulted in increased expenses and the devotion of significant management resources and we expect that the expenses for this process will continue to increase modestly.

We rely on sole source, third-party contract manufacturers to manufacture our products.

As we have completed the sale of our Manufacturing Assets to Genmab, we do not have the capability to manufacture any of our development-stage products. We have entered into a two-year supply agreement with Genmab that became effective upon the closing of the sale in March 2008. If we experience supply

problems with Genmab, there may not be sufficient supplies of our development-stage products for us to meet clinical trial demand, in which case our operations and results could suffer.

Our products must be manufactured in FDA-approved facilities and the process for qualifying and obtaining approval for a manufacturing facility is time-consuming. The manufacturing facilities on which we rely will be subject to ongoing, periodic unannounced inspection by the FDA and state agencies to ensure compliance with good manufacturing practices.

If our relationship with Genmab was to terminate unexpectedly or on short notice or expire without being renewed, our ability to meet clinical trial demand for our development-stage products could be adversely affected while we qualify a new manufacturer for that product and our operations and future results could suffer. In addition, we would need to expend significant amounts to qualify a new manufacturer and transfer technology from Genmab to the new manufacturer which would also adversely affect our results of operations.

Product supply interruptions, whether as a result of regulatory action or the termination of a relationship with a manufacturer, 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.

Our ability to file for, and to obtain, regulatory approvals for our products, as well as the timing of such filings, will depend on the abilities of the contract manufacturers we engage. We or our contract manufacturers may encounter problems with the following:

- production yields;
- quality control and assurance;
- availability of qualified personnel;
- availability of raw materials;
- adequate training of new and existing personnel;
- on-going compliance with standard operating procedures;
- on-going compliance with FDA regulations;
- production costs; and
- development of advanced manufacturing techniques and process controls.

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

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. Further, any significant manufacturing changes for the production of our product candidates could result in delays in development or regulatory approval or in the reduction or interruption of commercial sales of our product candidates. Our contract manufacturers' inability to maintain manufacturing operations in compliance with applicable regulations within our planned time and cost parameters could materially harm our business, financial condition and results of operations.

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 or an inability to immediately show comparability between the older material and the newer material after making 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 for use in clinical trials. Once a supplier's materials have been selected for use in the 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.

We must comply with extensive government regulations and laws.

We are subject, directly or through our customers, to extensive regulation by federal government, state governments, and the foreign countries in which we conduct our business.

In particular, we are subject to extensive and rigorous government regulation as a developer of drug products. For example, the FDA regulates, among other things, the development, testing, research, manufacture, safety, efficacy, record-keeping, labeling, storage, approval, quality control, adverse event reporting, advertising, promotions, sale and distribution of biopharmaceutical products. Our product candidates and any future products may also be subject to extensive regulation by foreign governments. The regulatory review and approval process, which includes preclinical studies and clinical trials of each product candidate, is lengthy, expensive and uncertain.

We must rely on our contract manufacturers and third-party suppliers for regulatory compliance and adhering to the FDA's current Good Manufacturing Practices (cGMP) requirements. If these manufacturers or suppliers fail to comply with applicable regulations, including FDA pre-or post-approval inspections and cGMP requirements, then the FDA could sanction us. These sanctions could include fines, injunctions, civil penalties, failure of regulatory authorities to grant marketing approval of our products, delay, suspension or withdrawal of approvals, license revocation, product seizures or recalls, operational restrictions or criminal prosecutions, any of which could significantly and adversely affect our business.

Laws that may directly or indirectly affect our ability to operate our business include, but are not limited, to the following:

- the federal Anti-Kickback Law, which prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual, or furnishing or arranging for a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;

- the federal False Claims Act, which imposes civil and criminal liability on individuals and entities who submit, or cause to be submitted, false or fraudulent claims for payment to the government;

- the federal False Statements Statute, which prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of or payment for healthcare benefits, items or services;

- the federal Foreign Corrupt Practices Act, which prohibits corporations and individuals from engaging in certain activities to obtain or retain business or to influence a person working in an official capacity; and

- state law equivalents to the Anti-Kickback Law and False Claims Act, which may not be limited to government reimbursed items.

If our operations are found to violate any applicable law or other governmental regulations, we may be subject to civil and criminal penalties, damages and fines, including exclusion from the Medicare and Medicaid programs and the curtailment or restructuring of our operations. Similarly, if the hospitals, physicians or other providers or entities with which we do business are found non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on us. The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations, and additional legal or regulatory change. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation.

We expend a significant amount on compliance efforts and the expenses have been, and may in the future be unpredictable, and adversely affect our results. Changing laws, regulations and standards may also create uncertainty and increase insurance costs. We are committed to compliance and maintaining high standards of corporate governance and public disclosure. As a result, we intend to invest all reasonably necessary resources to comply with evolving standards, and this investment may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

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

Even if the FDA grants us marketing approval for a product, the FDA may impose post-marketing requirements, such as:

- labeling and advertising requirements, restrictions or limitations, such as the inclusion of warnings, precautions, contra-indications or use limitations that could have a material impact on the future profitability of our product candidates;

- adverse event reporting;

- testing and surveillance to monitor our product candidates and their continued compliance with regulatory requirements; and

- inspection of products and manufacturing operations and, if any inspection reveals that the product or operation is not in compliance, prohibiting the sale of all products, suspending manufacturing or withdrawing market clearance.

The discovery of previously unknown problems with our product candidates, including adverse events of unanticipated severity or frequency, may result in restrictions of the products, including withdrawal from manufacture. Additionally, certain material changes affecting an approved product such as manufacturing changes or additional labeling claims are subject to further FDA review and approval. The FDA may revisit and change its prior determination with regard to the safety or efficacy of our products and withdraw any required approvals after we obtain them. Even prior to any formal regulatory action requiring labeling changes or affecting manufacturing, we could voluntarily decide to cease the distribution and sale or recall any of our future products if concerns about their safety and efficacy develop.

As part of the regulatory approval process, we or our contractors must demonstrate the ability to manufacture the pharmaceutical product to be approved. Accordingly, the manufacturing process and quality control procedures are required to comply with the applicable FDA cGMP regulations and other regulatory requirements. Good manufacturing practice regulations include requirements relating to quality control and quality assurance as well as the corresponding maintenance of records and documentation. Manufacturing facilities must pass an inspection by the FDA before initiating commercial manufacturing of any product. Pharmaceutical product manufacturing establishments are also subject to inspections by state and local authorities as well as inspections by authorities of other countries. To supply pharmaceutical products for use in the United States, 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. Although we do not currently have any marketed products, the foregoing considerations would be important to our future selection of contract manufacturers.

The FDA enforces post-marketing regulatory requirements, such as cGMP requirements, through periodic unannounced inspections. For example, in April 2008 the FDA made an unannounced visit to our Redwood City, California, offices to inspect our post-marketing safety surveillance practices for the commercial products we marketed and sold from March 2005 until March 2008. At the conclusion of the week-long inspection, we received from the FDA

two Inspectional Observations on Form 483, each of which we responded to in April 2008. Failure to pass an FDA inspection or timely or effectively respond to inspectional observations or otherwise adversely impact our operations.

Our collaborators, licensees and we also are subject to foreign regulatory requirements regarding the manufacture, development, marketing and sale of pharmaceutical products and, if the particular product is manufactured in the United States, FDA and other U.S. export provisions. These requirements 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.

Further, regulatory approvals may be withdrawn if we do not comply with regulatory standards or if problems with our products occur. 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. If we fail to comply with applicable FDA and other regulatory requirements at any stage during the regulatory process, we may be subject to sanctions, including:

- delays;
- warning letters;
- fines;
- clinical holds;
- product recalls or seizures;
- changes to advertising;
- injunctions;

- refusal of the FDA to review pending market approval applications or supplements to approval applications;
- total or partial suspension of product manufacturing, distribution, marketing and sales;
- civil penalties;
- withdrawals of previously approved marketing applications; and
- criminal prosecutions.

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.

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 exists even with respect to any products that receive regulatory approval for commercial sale. While we maintain liability insurance for our products, it may not be sufficient to satisfy any or all liabilities that may arise. Also, adequate insurance coverage may not be available in the future at acceptable cost, if at all.

Increased leverage as a result of our sale of notes in 2003 and 2005 may harm our financial condition and results of operations.

At March 31, 2008, we had $640.5 million in total liabilities outstanding, including $250.0 million in principal that remains outstanding under our 2.00% Convertible Senior Notes due February 15, 2012 (the 2005 Notes) and $250.0 million in principal that remains outstanding under our unsecured 2.75% Convertible Subordinated Notes due 2023 (the 2003 Notes). The 2003 and 2005 Notes do not restrict our future incurrence of indebtedness and we may incur additional indebtedness in the future. Our level of indebtedness will significantly affect our future operations because:

- we will have additional cash requirements in order to support the payment of interest on our outstanding indebtedness;
- increases in our outstanding indebtedness and leverage will increase our vulnerability to adverse changes in general economic and industry conditions, as well as to competitive pressure; and
- the levels of our outstanding debt could limit our ability to obtain additional financing for working capital, capital expenditures, general corporate and other purposes.

Our ability to make payments of principal and interest on our indebtedness depends upon our future performance, which will be subject to general economic conditions, industry cycles and financial, business and other factors affecting our operations, many of which we cannot control. Our ability to generate sufficient cash flow from operations in the future to service our debt may require us to, among other things:

- seek additional financing in the debt or equity markets;
- refinance or restructure all or a portion of our indebtedness, including the 2005 Notes or the 2003 Notes;
- sell selected assets;
- reduce or delay planned capital expenditures; or
- reduce or delay planned operating expenditures, such as clinical trials.

Such measures might not be sufficient to enable us to service our debt. In addition, any such financing, refinancing or sale of assets might not be available on economically favorable terms.

We may not have the ability to raise the funds to repurchase the 2003 Notes on the repurchase date or to finance any repurchase offer required by the indenture.

In August 2010, August 2013 and August 2018, respectively, holders of the 2003 Notes may require us to repurchase all or a portion of their 2003 Notes at 100% of their principal amount, plus any unpaid interest. For 2003 Notes to be repurchased in August 2010, we must pay for the repurchase in cash, and we may pay for the repurchase of 2003 Notes to be repurchased in August 2013 and August 2018, at our option, in cash, shares of our common stock or a combination of cash and shares of our common stock. In addition, if a repurchase event occurs (as defined in the indenture), each holder of the 2003 Notes may require us to repurchase all or a portion of the holder's 2003 Notes. We may not have sufficient funds available for any required repurchases of these securities. In addition, the terms of any agreements related to borrowing which we may enter into from time to time may prohibit or limit our repurchase of 2003 Notes or make our repurchase of 2003 Notes an event of default under certain circumstances. If a repurchase event occurs at a time when a credit agreement prohibits us from purchasing the 2003 Notes, we could seek the consent of the lender to purchase the 2003 Notes or could attempt to refinance the debt covered by the credit agreement. If we do not obtain a consent, we may not repurchase the 2003 Notes. Our failure to repurchase tendered 2003 Notes would constitute an event of default under the indenture for the 2003 Notes, which might also constitute a default under the terms of our other debt, including the 2005 Notes. In such circumstances, our financial condition and the value of our securities could be materially harmed.

We may not have sufficient cash to purchase the 2005 Notes, if required, upon a fundamental change.

Holders of the 2005 Notes may require us to purchase all or any portion of their 2005 Notes upon a fundamental change, which generally is defined as the occurrence of any of the following: (1) our common stock is not traded on a national securities exchange or listed on The Nasdaq Global Select Market; (2) any person acquires more than 50% of the total voting power of all shares of our capital stock; (3) certain mergers, consolidations, sales or transfers involving us occur; or (4) our Board of Directors does not consist of continuing directors. In certain situations, holders of the 2005 Notes will not have a repurchase right even if a fundamental change has occurred. In addition, we may not have sufficient cash funds to repurchase the 2005 Notes upon such a fundamental change. Although there are currently no restrictions on our ability to pay the purchase price, future debt agreements may prohibit us from repaying the purchase price. If we are prohibited from repurchasing the 2005 Notes, we could seek consent from our lenders at the time to repurchase the 2005 Notes. If we are unable to obtain their consent, we could attempt to refinance their debt. If we were unable to obtain consent or refinance the debt, we would be prohibited from repurchasing the 2005 Notes upon a fundamental change. If we were unable to purchase the 2005 Notes upon a fundamental change, it would result in an event of default under the indenture. An event of default under the indenture could result in a further event of default under our other then-existing debt. In addition, the occurrence of the fundamental change may be an event of default under our other debt, which could have a significant adverse affect on our financial condition.

The conversion of any of the outstanding 2003 Notes or 2005 Notes into shares of our common stock would have a dilutive effect, which could cause our stock price to go down.

The 2003 Notes and 2005 Notes are convertible, at the option of the holder, into shares of our common stock at varying conversion prices. We have reserved shares of our authorized common stock for issuance upon conversion of the 2003 Notes and 2005 Notes. If any or all of the 2003 Notes or 2005 Notes are converted into shares of our common stock, our existing stockholders will experience immediate dilution and our common stock price may be subject to downward pressure. If any or all of the 2003 Notes or 2005 Notes are not converted into shares of our common stock before their respective maturity dates, we will have to pay the holders of such notes the full aggregate principal amount of the 2003 Notes or 2005 Notes, respectively, then outstanding. Such payments could have a material adverse effect on our cash position.

Failure to achieve revenue targets or raise additional funds in the future may require us to reduce the scope of or eliminate one or more of our planned activities.

While we believe we have sufficient funds for our anticipated operations, we will need to generate significantly greater revenues to achieve and then maintain profitability on an annual basis. The product development, including clinical trials, manufacturing and regulatory approvals of product candidates currently in development, and the acquisition and development of additional product candidates by us will require a commitment of substantial funds. Our future funding requirements, which may be significantly greater than we expect, depend upon many factors, including:

- the progress, level and timing of research and development activities related to clinical trials we are conducting or that are being conducting with our collaborators, including clinical trials with respect to daclizumab and volociximab;
- the cost and outcomes of regulatory submissions and reviews;
- the continuation or termination of third party manufacturing or sales and marketing arrangements;

- the status of competitive products;
- our ability to defend and enforce our intellectual property rights; and
- our ability to extend the patent protection of our currently marketed products; and
- the establishment of additional strategic or licensing arrangements with other companies, or acquisitions.

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

Market prices for securities of biotechnology companies, including ourselves, have been highly volatile, and we expect such volatility to continue for the foreseeable future, so that investment in our securities involves substantial risk. For example, during the period from March 31, 2007 to March 31, 2008, our common stock closed as high as $27.70 per share and as low as $9.32 per share. Additionally, the stock market from time to time has experienced significant price and volume fluctuations 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;
- approval or introduction of competing products and technologies;
- disappointing sales of products from which we receive royalties or withdrawal from the market of an approved product from which we receive royalties;
- a change in the mix of U.S.-based Sales and ex-U.S.-based Sales in connection with our master patent license agreement with Genentech;
- results of clinical trials;
- failures or unexpected delays in timelines for our potential products in development, including the obtaining of regulatory approvals;
- delays in manufacturing or clinical trial plans;
- fluctuations in our operating results;
- market reaction to announcements by other biotechnology or pharmaceutical companies, including market reaction to various announcements regarding products licensed under our technology;
- initiation, termination or modification of agreements with our collaborators or disputes or disagreements with collaborators;
- 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 collaborators or insiders; and
- comments and expectations of results made by securities analysts.

If our operations are found to be in violation of any of the laws described above or the other governmental regulations to which we or our customers are subject, we may be subject to the applicable penalty associated with the violation, including civil and criminal penalties, damages, fines, exclusion from the Medicare and Medicaid programs and the curtailment or restructuring of our operations. Similarly, if the hospitals, physicians or other providers or entities with which we do business are found non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on us. The risk of our being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations, and additional legal or regulatory change. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As of March 31, 2008, there has been no material change in our market risk exposure from that described in our Annual Report on Form 10-K for the year ended December 31, 2007.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures. Under the supervision and with the participation of our management, including our Interim Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (the Exchange Act)) as of the end of the period covered by this report. Based on this evaluation, our Interim Chief Executive Officer and Chief Financial Officer have concluded that, as of March 31, 2008, that due to the material weakness discussed below, our disclosure controls and procedures were not effective to ensure the information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Changes in internal controls. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. In connection with the filing of our Annual Report on Form 10-K for the year ended December 31, 2007, we identified a material weakness that related to ineffective controls in our financial statement close process. Specifically, we did not have a sufficient number of accounting personnel with relevant technical accounting and financial reporting expertise to effectively design and operate controls over various non-routine and estimation classes of transactions including the classification of clinical affairs expenses, the accounting for clinical trial expenses related to change orders, the accounting for asset retirement obligations related to leased facilities, the accounting for retention bonuses, the estimated forfeiture rate for the purposes of recording employee stock-based compensation, and the impairment analysis related to intangible assets. As a result of this material weakness, errors were identified by our auditors in the 2007 consolidated financial statements related to the classification of expenses between research and development expenses and general and administrative expenses, an understatement of clinical development expenses, the understatement of lease expenses, the understatement of retention bonus expenses, and stock-based compensation expense. These errors were corrected in the consolidated financial statements as of and for the year ended December 31, 2007.

We have taken steps to remediate the deficiencies that gave rise to this material weakness, including enhancing controls that had not been operating effectively and designing and implementing new controls to remediate design deficiencies within our financial statement close process. Although we have made progress towards remediation of the deficiencies giving rise to the material weakness, we do not believe that sufficient time has passed to allow for an adequate testing sample nor have we completed our testing of the new or enhanced controls. As such, we were unable to conclude that the material weakness described above was remediated as of March 31, 2008.

There were no other changes in our internal controls over financial reporting during the quarter ended March 31, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the effectiveness of controls. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within an organization have been detected. We continue to improve and refine our internal controls and our compliance with existing controls is an ongoing process.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

European Patent Oppositions

Two humanization patents based on the Queen technology were issued to us by the European Patent Office, European Patent No. 0 451 216 (the ‘216 Patent) and European Patent No. 0 682 040 (the ‘040 Patent). Eighteen notices of opposition to our ‘216 Patent and eight notices of opposition to our ‘040 Patent were filed by major pharmaceutical and biotechnology companies, among others, and we are currently in two separate opposition proceedings with respect to these two patents. Six opponents, including Genentech, have withdrawn from the opposition proceedings with respect to the opposition to our ‘216 Patent leaving 12 remaining opponents. A description of these two proceedings is set forth below.

Opposition to ‘216 Patent

In November 2003, in an appeal proceeding of a prior action of the Opposition Division of the European Patent Office, the Technical Board of Appeal of the European Patent Office ordered that certain claims in our ‘216 Patent be remitted to the Opposition Division for further prosecution and consideration of issues of patentability (entitlement to priority, novelty, enablement and inventive step). The claims remitted cover the production of humanized antibody light chains that contain amino acid substitutions made under our antibody humanization technology. In April 2007, at an oral proceeding the Opposition Division upheld claims that are virtually identical to the claims remitted by the Technical Board of Appeal to the Opposition Division. The opponents in this opposition have the right to appeal this decision of the Opposition Divisions. If any of the opponents appeal the decision to the Technical Board of Appeal, the ‘216 Patent would continue to be enforceable during the appeal process. Two notices of appeal have since been filed by Boehringer Ingelheim GmbH and Celltech R&D Limited.

Until the opposition 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 the opposition is eventually successful, our ability to collect royalties on European sales of antibodies humanized by others would depend on the scope and validity of our ‘040 Patent, which is also being opposed, 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, if the Opposition Division rules against us, that decision could encourage challenges of our related patents in other jurisdictions, including the United States. Such a decision may also 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 opposition process with respect to our ‘216 Patent, if we were to commence an infringement action to enforce that patent, such an action would likely be stayed until the opposition 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. patents.

Opposition to ‘040 Patent

At an oral hearing in February 2005, the Opposition Division decided to revoke the claims in our ‘040 Patent. The Opposition Division based its decision on formal issues and did not consider substantive issues of patentability. We appealed the decision to the Technical Board of Appeal. The appeal suspended the legal effect of the decision of the Opposition Division during the appeal process. The Technical Board of Appeal has not scheduled a date for the appeal hearing with respect to the ‘040 Patent.

We intend to continue to vigorously defend our two European Queen patents in these two proceedings. We may not prevail in either of the opposition proceedings or any litigation contesting the validity of these patents. If the outcome of either of the 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.

Patent Infringement Suit Against Alexion

In March 2007, after the FDA's market approval of Alexion Pharmaceuticals, Inc.'s (Alexion) Soliris™ (eculizumab) humanized antibody product, we filed a lawsuit against Alexion in the United States District Court for the District of Delaware for infringement of certain claims of United States Patent Number 5,693,761, United States Patent Number 5,693,762 and United States Patent Number 6,180,370 (collectively, the patents-in-suit), which are three of our antibody humanization patents, commonly referred to as the Queen patents. We are seeking monetary damages and other relief. In June 2007, Alexion filed an answer denying that its Soliris product infringes the patents-in-suit, asserting certain defenses and counterclaiming for non-infringement and invalidity, and thereafter amended its answer to include a defense of unenforceability. In July 2007, the discovery stage of this litigation began and discovery is ongoing. We intend to vigorously assert our rights under the patents-in-suit and defend against Alexion's counterclaims.

ITEM 1A. RISK FACTORS

There have been no material changes from the risk factors disclosed in the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2007 except that:

· We added the first risk factor in this Item 1A;

· We deleted the risk factors entitled "We may not be able to consummate the sale of our manufacturing related assets in Minnesota to GMN, Inc." and "The process of pursuing and implementing multiple significant transactions and transaction structures simultaneously diverts the attention of our management and employees, increases our professional services expenses and may disrupt our operations" because the risks described in these risk factors are no longer relevant; and

· We deleted the risk factor entitled We may not be able to consummate the sale of our manufacturing related assets in Minnesota to GMN, Inc." because we consummated that sale; and

· We also revised the other risk factors listed below that are not identified in the above bullets in this Item 1A.

We have decided to separate our antibody humanization royalty assets from our biotechnology operations by spinning off our biotechnology assets into a separate publicly traded entity, the process for which may divert the attention of our management and employees, will increase our professional services expenses, may disrupt our operations and is subject to other risks.

In April 2008, we announced that we had decided to separate our antibody humanization royalty assets from our biotechnology operations by spinning off our biotechnology assets into a separate publicly traded entity and that we expected to complete this separation by the end of 2008. Our ability to timely effect the Spin-off is subject to the completion of numerous tasks, including the preparation of carve-out audited financial statements for our biotechnology operations, the completion of required regulatory filings and obtaining the consent of third parties to the transfer of contractual rights to the Spin-off entity. The failure to obtain necessary consents from third parties to the transfer of contractual rights in the Spin-off could delay or make impractical our plan to effect a Spin-off of our biotechnology assets.

The process to plan for and effect the Spin-off of our biotechnology assets will demand a significant amount of time and effort from our management and employees. The diversion of our management's and employees' attention to the Spin-off process may disrupt our operations, including by adversely impacting the progress of our discovery and development efforts and our relationships with partners.

We expect to initially fund the biotechnology Spin-off with $375 million in cash. We expect that this initial capitalization, along with potential milestone payments, non-humanization royalties and other payments under collaboration and other agreements, including the contingent consideration related to our sale of our Cardiovascular Assets, would fund the biotechnology Spin-off for approximately three years based on current operating plans. Changes in our development or operations plans, however, could affect the initial cash funding needed to adequately capitalize the biotechnology entity.

We will incur significant expenditures for professional services in connection with our planning and implementation of the Spin-off, including for legal and accounting services.

We have ended our solicitation of interest in the Company and its assets, other than our humanization royalty stream assets, and have undertaken to restructure the Company, which could distract our management and employees, disrupt operations, make more difficult our ability to attract and retain key employees and cause other difficulties.

From October 2007 until March 2008, we pursued a process to solicit interest in the purchase of the Company or our key assets, including the Commercial and Cardiovascular Assets and humanization royalty stream assets. In March 2008, we announced the end of this process and that we would focus on discovering and developing innovative antibodies for cancer and immunologic diseases. In April 2008, we decided to separate our antibody humanization royalty assets from our biotechnology operations by spinning off our biotechnology assets into a separate publicly traded entity.

In an effort to reduce operating costs to a level more consistent with a biotechnology company focused solely on antibody discovery and development, in March 2008, we commenced a restructuring pursuant to which we have eliminated approximately 120 employment positions. We intend to eliminate approximately 130 additional employment positions over the next 12 months. Many of these positions support our provision of transition services to Otsuka, EKR and Genmab in connection with our sale of assets to these parties. We have offered these 130 transition employees and the employees that we expect to retain after the restructuring retention bonuses and other incentives to encourage these employees to stay with the Company. The disruption, anxiety and uncertainty caused by our restructuring could cause employees to seek other employment opportunities notwithstanding the retention incentives we have

implemented. The loss of personnel during this period could disrupt operations and adversely impact our ability to perform the transition services we are obligated to perform for Otsuka, EKR and Genmab.

This disruption and uncertainty may also make the recruitment of key personnel more difficult. We are currently engaged in a search for a new Chief Executive Officer, and the disruption and uncertainty caused by our restructuring may make such recruitment more difficult. The failure to recruit a new Chief Executive Officer could adversely impact our future performance or our plans for the timing of future transactions.

Our restructuring efforts may continue to divert the attention of our management and employees away from our operations, harm our reputation and increase our expenses. We cannot assure you that we will not undertake additional restructuring activities, that any of our restructuring efforts will succeed, or that we will be able to realize the cost savings and other anticipated benefits from our restructuring plans or that we will successfully spin off our biotechnology assets.

In addition, employees whose positions we will eliminate in connection with this reduction may seek employment with our competitors. Although all employees are required to sign a confidentiality agreement with us at the time of hire, we cannot provide assurance that the confidential nature of our proprietary information will be maintained in the course of such future employment.

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

Our revenues and revenue growth 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. In particular, because we have divested the Commercial and Cardiovascular Assets, sales of which constituted 40% and 44% of our total revenues (including discontinued operations) in 2006 and 2007, respectively, we expect our revenues to decline significantly in the near term. Antibody humanization royalties constituted 74% and 85% of our revenues from continuing operations in 2006 and 2007, respectively. We continue to evaluate the possible sale or securitization of our antibody humanization royalties, either before or after our planned Spin-off of our biotechnology assets, and distribution of

proceeds from such a sale or securitization to stockholders. Any sale of our antibody humanization royalties would decrease our revenue while a securitization of our antibody humanization royalties would increase our expenses as we would become obligated to make periodic principal and interest payments. Our antibody humanization royalty revenues, even after any potential sale or securitization, may be unpredictable and fluctuate since they depend upon:

- the seasonality and rate of growth of sales of existing and licensed products;
- the mix of U.S.-based Sales and ex-U.S.-based Sales in connection with our master patent license agreement with Genentech;
- the existence of competing products;
- the continued safety of approved licensed products;
- the marketing and promotional efforts of our licensees from whom we receive royalty payments;
- our ability to successfully defend and enforce our patents; and
- the timing of milestone payments, licensing and signing fees and completion of manufacturing, development or other services we must pay or that we may receive under licensing, collaboration and royalty arrangements.

We receive a significant portion of our royalty revenues from sales of *Synagis*, which is marketed by MedImmune. This product has significantly 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 is expected to continue to contribute to fluctuation in our revenues from quarter to quarter.

Additionally, our master patent license agreement with Genentech provides for a royalty fee structure that has four tiers, under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and sold anywhere (U.S.-based Sales) in a given calendar year decreases on incremental U.S.-based Sales above the net sales thresholds. As a result, Genentech's average annual royalty rate declines as Genentech's U.S.-based Sales increase. Because we receive royalties in arrears, the average royalty rate for the payments we receive from Genentech in the second calendar quarter, which would be for Genentech's sales from the first calendar quarter, is higher than the average royalty rate for following quarters and is lowest in the first calendar quarter when more of Genentech's U.S.-based Sales bear royalties at lower royalty rates. The average royalty rate for payments we receive from Genentech is lowest in the first calendar quarter of each year, which would be for Genentech's sales from the fourth calendar quarter from the preceding year, when more of Genentech's U.S.-based Sales bear royalties at lower royalty rates. With respect to Genentech's royalty-bearing products that are both manufactured and sold outside of the United States (ex-U.S.-based Sales), the royalty rate that we receive from Genentech is a fixed rate based on a percentage of the underlying ex-U.S.-based Sales. The mix of U.S.-based Sales and ex-U.S.-based Sales and the manufacturing location are outside of our control and have fluctuated in the past and may continue to fluctuate in future periods.

The recognition of license, collaboration and other revenues that we otherwise would defer and recognize over a period of time under applicable accounting principles may be accelerated in certain circumstances. For example, if a licensee of ours terminates a development program for which we received an upfront non-refundable fee that required our ongoing performance, the recognition of the revenues would be accelerated and recognized in the period in which the termination occurred. In such a case, it may cause our revenues during that period to be higher than it otherwise would have been had the circumstances not occurred. For example, during the third quarter of 2006 we recognized $18.8 million of deferred revenue, or 17% of the total revenues for that quarter, related to Roche's election in August 2006 to discontinue its co-development of daclizumab in treating asthma and other respiratory diseases.

Our expenses may be unpredictable and may fluctuate from quarter to quarter due to the timing and the unpredictable nature of clinical trial and related expenses, including payments owed by us and to us under collaborative agreements for reimbursement of expenses and which we record during the quarter in which such expenses are reported to us or to our partners and agreed to by us or our partners. Moreover, the underlying terms of in-licensing and royalty arrangements, especially those with tiered payment structures, will impact the timing of costs and expenses recognized during any particular quarter. In

addition, the recognition of clinical trial and other expenses that we otherwise would recognize over a period of time under applicable accounting principles may be accelerated in certain circumstances. In such a case, it may cause our expenses during that period to be higher than they otherwise would have been had the circumstances not occurred. For example, if we terminate a clinical trial for which we paid non-refundable upfront fees to a clinical research organization and in which we did not accrue all of the patient costs, the recognition of the expense associated with those fees that we were recognizing as we accrued patient costs would be accelerated and recognized in the period in which the termination occurred.

Our antibody humanization patents, which are of significant value to us, are being challenged and a successful challenge or refusal to take a license could limit our future revenues.

Our Queen patents are of significant value to us. Royalty revenues received under agreements for the license of rights under our Queen patents accounted for 82% of revenues from continuing operations in 2005, 74% of revenues from continuing operations in 2006 and 85% of revenues from continuing operations in 2007. We expect that these royalty revenues will constitute the vast majority of our revenues now that we have completed the divestiture of the commercial products. We expect that we will continue to experience aggregate royalty revenue growth based on the assumed continued growth in aggregate product sales underlying our royalty revenues and that these royalty revenues will continue to represent the majority of our total revenues until our Queen patents expire in 2014. We continue to evaluate the possible sale or securitization of our antibody humanization royalties, either before or after our planned Spin-off of our biotechnology assets, and distribution of the proceeds from such a sale or securitization to stockholders. Any sale of our antibody humanization royalties would decrease our revenue while a securitization of our antibody humanization royalties would increase our expenses as we would become obligated to make periodic principal and interest payments.

Two of our Queen patents were issued to us by the European Patent Office, European Patent No. 0 451 216 (the ‘216 Patent) and European Patent No. 0 682 040 (the ‘040 Patent). Eighteen notices of opposition to our ‘216 Patent and eight notices of opposition to our ‘040 Patent were filed by major pharmaceutical and biotechnology companies, among others, and we are currently in two separate opposition proceedings with respect to these two patents. Although six opponents, including Genentech, have withdrawn from the opposition proceedings with respect to the opposition to our ‘216 Patent, 12 opponents to this patent remain. In addition, although the Opposition Division upheld claims in our ‘216 Patent in April 2007 that are virtually identical to the claims remitted by the Technical Board of Appeal to the Opposition Division, the opponents in this opposition have the right to appeal the Opposition Division’s recent decision and this proceeding has not yet concluded. A description of both opposition proceedings is included under the heading “Legal Proceedings” in Part II, Item 1 of this Quarterly Report. If our patents are successfully opposed in either of these two proceedings or third parties decline to take licenses to our Queen patents, our future revenues would be adversely affected. For example, if the opponents in the proceeding regarding our ‘216 Patent are successful, our ability to collect royalties on European sales of antibodies humanized by others would depend on: (i) the scope and validity of our ‘040 Patent; and (ii) whether the antibodies are manufactured in a country outside of Europe where they are covered by one or more of our patents and, if so, on the terms of our license agreements.

In addition, until the opposition proceedings are resolved, we may be limited in our ability to collect royalties or to negotiate future license agreements based on our Queen patents. An adverse decision by the Opposition Division could encourage challenges to our related Queen patents in other jurisdictions, including the United States. Such a 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 proceedings to enforce our rights under our Queen patents. In such a situation, a likely defensive strategy to our action would be to challenge our patents in that jurisdiction. During the opposition process with respect to our ‘216 Patent, if we were to commence an infringement action in Europe to enforce that patent, such an action would likely be stayed until the opposition 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. patents.

Although we intend to vigorously defend the European patents in these two proceedings, we may not prevail in either of these opposition proceedings or any litigation contesting the validity of these patents. For example, our Japanese humanization patent, which was issued in September 1998, was opposed and eventually revoked by the Japanese Patent Office in March 2001. Although we appealed the Japanese Patent Office’s revocation of this patent, the Tokyo High Court upheld the revocation of the patent and, in December 2004, the Japanese Supreme Court denied our petition for review of the Tokyo High Court’s decision. The decision by the Japanese Supreme Court concluded the proceedings in the matter and the Japanese Patent Office’s decision to revoke our patent is final and nonappealable.

If the outcome of either of the European 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.

Our ability to maintain and increase our revenues from licensing our Queen patents is dependent upon third parties entering into new patent licensing arrangements, exercising rights under existing patent rights agreements, paying royalties under existing patent licenses with us and not terminating those existing licenses with us. To date, with the exception of Alexion Pharmaceuticals, Inc. (Alexion), we have succeeded in obtaining and maintaining such licensing arrangements, and in receiving royalties on product sales, from parties whose products may be covered by our patents. However, there can be no assurance that we will continue to succeed in our licensing efforts in the future. In the past, we have experienced challenges in our licensing efforts, such as the disagreement we had with Genentech in 2003 over whether its *Xolair* antibody was covered under our humanization patents. Although we subsequently reached an amicable settlement with Genentech that is intended to resolve such disagreements, Genentech or other companies may, in the future not enter into or terminate their licensing agreements with us, or seek to challenge our U.S. patents through litigation or patent office proceedings, such as re-examinations or interferences. More recently, in March 2007, the FDA approved Alexion’s Soliris™ (eculizumab) humanized antibody product for marketing and we filed a lawsuit against Alexion seeking monetary damages for infringement of certain of certain claims of our Queen patents and other relief. In June 2007, Alexion filed an answer denying that its *Soliris* product infringes our patents, asserting certain defenses and counterclaiming for non-infringement and invalidity, and thereafter amended its answer to include a defense of unenforceability. In July 2007, the discovery stage of this litigation began and discovery is ongoing. We intend to vigorously assert our rights under the patents-in-suit and defend against Alexion’s counterclaims. If we experience difficulty in enforcing our patent rights through licenses, or if our licensees, or prospective licensees, challenge our antibody humanization patents, our revenues and financial condition could be adversely affected, and we could be required to undertake additional actions, including litigation, to enforce our rights. Such efforts would increase our expenses and could be unsuccessful.

ITEM 6. EXHIBITS

*10.1	Stock Option Agreement between the Company and L. Patrick Gage effective November 16, 2007
*10.2	Notice of Option Grant for L. Patrick Gage effective November 16, 2007
*10.3	Offer Letter between the Company and Dr. Mark McCamish effective February 16, 2007
*10.4	Offer Letter between the Company and Jaisim Shah effective July 18, 2000
10.5	Asset Purchase Agreement between the Company and EKR Therapeutics, Inc. dated February 4, 2008†
10.6	Asset Purchase Agreement between the Company and GMN, Inc. dated February 21, 2008†

* Management contract or compensatory plan or arrangement.
† Certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request under 17 C.F.R. Sections 200.80(b)(4) and 24b-2.

SIGNATURES

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

Dated: May 12, 2008

PDL BIOPHARMA, INC.
(Registrant)

/s/ L. Patrick Gage
L. Patrick Gage
Interim Chief Executive Officer
(Principal Executive Officer)

/s/ Andrew L. Guggenhime
Andrew L. Guggenhime
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

/s/ Herb C. Cross
Herb C. Cross
Corporate Controller
(Principal Accounting Officer)

PDL BIOPHARMA, INC.
STOCK OPTION AGREEMENT

PDL BioPharma, Inc. has granted to the Participant named in the *Notice of Grant of Stock Option* (the *"**Grant Notice**"*) to which this Stock Option Agreement (the *"**Option Agreement**"*) is attached an option (the *"**Option**"*) to purchase certain shares of Stock upon the terms and conditions set forth in the Grant Notice and this Option Agreement. The Option has been granted pursuant to and shall in all respects be subject to the terms and conditions of the PDL BioPharma, Inc. 2005 Equity Incentive Plan (the *"**Plan**"*), as amended to the Date of Grant, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with the Grant Notice, this Option Agreement, the Plan and a prospectus for the Plan in the form most recently registered with the Securities and Exchange Commission (the *"**Plan Prospectus**"*), (b) accepts the Option subject to all of the terms and conditions of the Grant Notice, this Option Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Grant Notice, this Option Agreement or the Plan.

1. **DEFINITIONS AND CONSTRUCTION.**

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Option Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

2. **TAX STATUS OF OPTION.**

This Option is intended to be a Nonstatutory Stock Option and shall not be treated as an Incentive Stock Option within the meaning of Section 422(b) of the Code.

3. **ADMINISTRATION.**

All questions of interpretation concerning this Option Agreement shall be determined by the Committee. All determinations by the Committee shall be final and binding upon all persons having an interest in the Option. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, or election.

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4. **EXERCISE OF THE OPTION.**

4.1 **Right to Exercise.** Except as otherwise provided herein, the Option shall be exercisable on and after the Initial Vesting Date and prior to the termination of the Option (as provided in Section 6) in an amount not to exceed the number of Vested Shares less the number of shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more shares than the Number of Option Shares, as adjusted pursuant to Section 9.

4.2 **Method of Exercise.** Exercise of the Option shall be by means of electronic or written notice (the *"**Exercise Notice**"*) in a form authorized by the Company. An electronic Exercise Notice must be digitally signed or authenticated by the Participant in such manner as required by the notice and transmitted to the Company or an authorized representative of the Company (including a third-party administrator designated by the Company). In the event that the Participant is not authorized or is unable to provide an electronic Exercise Notice, the Option shall be exercised by a written Exercise Notice addressed to the Company, which shall be signed by the Participant and delivered in person, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by such other means as the Company may permit, to the Company, or an authorized representative of the Company (including a third-party administrator designated by the Company). Each Exercise Notice, whether electronic or written, must state the Participant's election to exercise the Option, the number of whole shares of Stock for which the Option is being exercised and such other representations and agreements as to the Participant's investment intent with respect to such shares as may be required pursuant to the provisions of this Option Agreement. Further, each Exercise Notice must be received by the Company prior to the termination of the Option as set forth in Section 6 and must be accompanied by full payment of the aggregate Exercise Price for the number of shares of Stock being purchased. The Option shall be deemed to be exercised upon receipt by the Company of such electronic or written Exercise Notice and the aggregate Exercise Price.

4.3 **Payment of Exercise Price.**

(a) ***Forms of Consideration Authorized.*** Except as otherwise provided below, payment of the aggregate Exercise Price for the number of shares of Stock for which the Option is being exercised shall be made (i) in cash or by check or cash equivalent, (ii) if permitted by the Company, by tender to the Company, or attestation to the ownership, of whole shares of Stock owned by the Participant having a Fair Market Value not less than the aggregate Exercise Price, (iii) by means of a Cashless Exercise, as defined in Section 4.3(b), or (iv) by any combination of the foregoing.

(b) ***Limitations on Forms of Consideration.***

(i) **Tender of Stock.** Notwithstanding the foregoing, the Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock. If required by the Company, the Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for more than six (6) months or such other period, if any, required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(ii) **Cashless Exercise.** A *"Cashless Exercise"* means the delivery of a properly executed notice together with irrevocable instructions to a broker in a form acceptable to the Company providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares of Stock acquired upon the exercise of the Option pursuant to a program or procedure approved by the Company (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System). The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any such program or procedure, including with respect to the Participant notwithstanding that such program or procedures may be available to others.

4.4 **Tax Withholding.** At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, and otherwise agrees to make adequate provision for (including by means of a Cashless Exercise to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Participating Company Group, if any, which arise in connection with the Option. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of the Participating Company Group have been satisfied by the Participant.

4.5 **Beneficial Ownership of Shares; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice any or all shares acquired by the Participant pursuant to the exercise of the Option. Except as provided by the preceding sentence, a certificate for the shares as to which the Option is exercised shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

4.6 **Restrictions on Grant of the Option and Issuance of Shares.** The grant of the Option and the issuance of shares of Stock upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares of Stock upon exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, the Option may not be exercised unless (i) a registration statement under the Securities Act shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. THE PARTICIPANT IS CAUTIONED THAT THE OPTION MAY NOT BE EXERCISED UNLESS THE FOREGOING CONDITIONS ARE SATISFIED. ACCORDINGLY, THE PARTICIPANT MAY NOT BE ABLE TO EXERCISE THE OPTION WHEN DESIRED EVEN THOUGH THE OPTION IS VESTED. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares subject to the Option shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such

requisite authority shall not have been obtained. As a condition to the exercise of the Option, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

4.7 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise of the Option.

5. **NONTRANSFERABILITY OF THE OPTION.**

During the lifetime of the Participant, the Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. The Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Following the death of the Participant, the Option, to the extent provided in Section 7, may be exercised by the Participant's legal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

6. **TERMINATION OF THE OPTION.**

The Option shall terminate and may no longer be exercised after the first to occur of (a) the close of business on the Option Expiration Date, (b) the close of business on the last date for exercising the Option following termination of the Participant's Service as described in Section 7, or (c) a Change in Control to the extent provided in Section 8.

7. **EFFECT OF TERMINATION OF SERVICE.**

7.1 **Option Exercisability.** The Option shall terminate immediately upon the Participant's termination of Service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is then vested only during the applicable time period as determined below and thereafter shall terminate.

(a) ***Disability.*** If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) ***Death.*** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months after the Participant's termination of Service.

(c) ***Termination After Change in Control***. If the Participant's Service ceases as a result of a Termination After Change in Control (as defined below), then (i) the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of six (6) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(d) ***Termination After Agreement to Resign Employment***. If the Participant's Service as an Employee ceases as a result of an Agreement to Resign Employment (as defined below) and as of the effective date of the termination of Participant's Service as an Employee, the Participant continues his Service as a member of the Board, then the number of Vested Shares shall be increased by an amount equal to fifty percent (50%) of the Number of Option Shares (but in no event to a number in excess of 100% of the Number of Option Shares) effective as of the date on which the Participant's Service as an Employee terminated.

(e) ***Other Termination of Service.*** If the Participant's Service terminates for any reason, except Disability, death or Termination After Change in Control, the Option, to the extent unexercised and exercisable for Vested Shares by the Participant on the date on which the Participant's Service terminated, may be exercised by the Participant within three (3) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

7.2 **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, if the exercise of the Option within the applicable time periods set forth in Section 7.1 is prevented by the provisions of Section 4.6, the Option shall remain exercisable until thirty (30) days after the date such exercise would no longer be prevented by such provisions, but in any event no later than the Option Expiration Date.

7.3 **Certain Definitions.**

(a) "***Agreement to Resign Employment***" means the termination by Participant of his Service as an Employee upon the mutual agreement of Participant and the Board that Participant should resign as an Employee, which agreement by the Board shall occur at the time a majority of the members of the Board other than Participant adopt a resolution that Participant should resign as an Employee.

(b) "***Termination After a Change in Control***" shall mean either of the following events occurring upon or within twelve (12) months after a Change in Control:

(i) termination by the Participating Company Group of the Participant's Service for any reason other than for Cause (as defined in the Plan); or

(ii) the Participant's resignation from all capacities in which the Participant is then rendering Service within a reasonable period of time following the event constituting a Constructive Termination (as defined below).

Notwithstanding any provision herein to the contrary, Termination After a Change in Control shall not include any termination of the Participant's Service which (1) is for Cause (as defined in the Plan); (2) is a result of the Participant's death or disability; (3) is a result of the Participant's voluntary termination of Service other than upon a Constructive Termination; or (4) occurs prior to the effectiveness of a Change in Control.

(c) "***Constructive Termination***" shall mean any one or more of the following:

(i) without the Participant's express written consent, the assignment to the Participant of any duties, or any limitation of the Participant's responsibilities, substantially inconsistent with the Participant's positions, duties, responsibilities and status with a Participating Company immediately prior to the date of the Change in Control;

(ii) without the Participant's express written consent, the relocation of the principal place of the Participant's Service to a location that is more than fifty (50) miles from the Participant's principal place of Service immediately prior to the date of the Change in Control, or the imposition of travel requirements substantially more demanding of the Participant than such travel requirements existing immediately prior to the date of the Change in Control;

(iii) any failure by a Participating Company to pay, or any material reduction by a Participating Company of, (1) the Participant's base salary in effect immediately prior to the date of the Change in Control, or (2) the Participant's bonus compensation, if any, in effect immediately prior to the date of the Change in Control (subject to applicable performance requirements with respect to the actual amount of bonus compensation earned by the Participant); or

(iv) any failure by a Participating Company to (1) continue to provide the Participant with the opportunity to participate, on terms no less favorable than those in effect for the benefit of any employee group which customarily includes a Person holding the employment position or a comparable position with the Participating Company then held by the Participant, in any benefit or compensation plans and programs, including, but not limited to, the Participating Company's life, disability, health, dental, medical, savings, profit sharing, stock purchase and retirement plans, if any, in which the Participant was participating immediately prior to the date of the Change in Control, or their equivalent, or (2) provide the Participant with all other fringe benefits (or their equivalent) from time to time in effect for the benefit of any employee group which customarily includes a Person holding the employment position or a comparable position with the Participating Company then held by the Participant.

8. **EFFECT OF CHANGE IN CONTROL.**

In the event of a Change in Control, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the "***Acquiror***"), may, without the consent of the Participant, assume or continue in full force and effect the Company's rights and obligations under the Option or substitute for the Option a substantially equivalent option for the Acquiror's stock. In the event of a Change in Control, and provided that the Participant's

Service has not terminated prior to the date of the Change in Control, any shares subject to the Option which are not Vested Shares shall become Vested Shares effective as of the date of the Change in Control. Any exercise of the Option that was permissible solely by reason of this Section shall be conditioned upon the consummation of the Change in Control. The Option shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control to the extent that the Option is neither assumed or continued by the Acquiror in connection with the Change in Control nor exercised as of the date of the Change in Control.

9. **ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate adjustments shall be made in the number, Exercise Price and kind of shares subject to the Option, in order to prevent dilution or enlargement of the Participant's rights under the Option. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number, and in no event may the Exercise Price be decreased to an amount less than the par value, if any, of the stock subject to the Option. The Committee in its sole discretion, may also make such adjustments in the terms of the Option to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. The adjustments determined by the Committee pursuant to this Section shall be final, binding and conclusive.

10. **RIGHTS AS A STOCKHOLDER, DIRECTOR, EMPLOYEE OR CONSULTANT.**

The Participant shall have no rights as a stockholder with respect to any shares covered by the Option until the date of the issuance of the shares for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares are issued, except as provided in Section 9. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Option Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Participant's Service as a Director, an Employee or Consultant, as the case may be, at any time.

11. **LEGENDS.**

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Participant in order to carry out the provisions of this Section.

12. **ARBITRATION.**

In the event a dispute between the parties to this Option Agreement arises out of, in connection with, or with respect to this Option Agreement, or any breach of this Option Agreement, such dispute will, on the written request of one (1) party delivered to the other party, be submitted and settled by arbitration in Redwood City, California in accordance with the rules of the American Arbitration Association then in effect and will comply with the California Arbitration Act, except as otherwise specifically stated in this Section 12. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The parties submit to the in personam jurisdiction of the Supreme Court of the State of California for the purpose of confirming any such award and entering judgment upon the award. Notwithstanding anything to the contrary that may now or in the future be contained in the rules of the American Arbitration Association, the parties agree as follows:

12.1 Each party will appoint one individual approved by the American Arbitration Association to hear and determine the dispute within twenty (20) days after receipt of notice of arbitration from the noticing party. The two (2) individuals so chosen will select a third impartial arbitrator. The majority decision of the arbitrators will be final and binding upon the parties to the arbitration. If either party fails to designate its arbitrator within twenty (20) days after delivery of the notice provided for in this Section 12.1, then the arbitrator designated by the one (1) party will act as the sole arbitrator and will be considered the single, mutually approved arbitrator to resolve the controversy. In the event the parties are unable to agree upon a rate of compensation for the arbitrators, they will be compensated for their services at a rate to be determined by the American Arbitration Association.

12.2 The parties will enjoy, but are not limited to, the same rights to discovery as they would have in the United States District Court for the Northern District of California.

12.3 The arbitrators will, upon the request of either party, issue a written opinion of their findings of fact and conclusions of law.

12.4 Upon receipt by the requesting party of said written opinion, said party will have the right within ten (10) days to file with the arbitrators a motion to reconsider, and upon receipt of a timely request the arbitrators will reconsider the issues raised by said motion and either confirm or change their majority decision which will then be final and binding upon the parties to the arbitration.

12.5 The arbitrators will award to the prevailing party in any such arbitration reasonable expenses, including attorneys' fees and costs, incurred in connection with the dispute.

13. **MISCELLANEOUS PROVISIONS.**

13.1 **Termination or Amendment.** The Committee may terminate or amend the Plan or the Option at any time; provided, however, that except as provided in Section 8 in connection with a Change in Control, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Participant unless such termination or amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Option Agreement shall be effective unless in writing.

13.2 **Compliance with Section 409A**. The Company intends that income realized by the Participant pursuant to the Plan and this Agreement will not be subject to taxation under Section 409A. The provisions of the Plan and this Agreement shall be interpreted and construed in favor of satisfying any applicable requirements of Section 409A. The Company, in its reasonable discretion, may amend (including retroactively) the Plan and this Agreement in order to conform to the applicable requirements of Section 409A, including amendments to facilitate the Participant's ability to avoid taxation under Section 409A. **However, the preceding provisions shall not be construed as a guarantee by the Company of any particular tax result for income realized by the Participant pursuant to the Plan or this Agreement.** In any event, and except for the responsibilities of the Company set forth in Section 4.4, no Participating Company shall be responsible for the payment of any applicable taxes on income realized by the Participant pursuant to the Plan or this Agreement.

13.3 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Option Agreement.

13.4 **Binding Effect.** Subject to the restrictions on transfer set forth herein, this Option Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

13.5 **Delivery of Documents and Notices.** Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Option Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, the Grant Notice, this Option Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, the Participant may deliver electronically the Grant Notice and Exercise Notice called for by Section 4.2 to the Company or to such third party involved in administering the Plan as the Company may

designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** The Participant acknowledges that the Participant has read Section 13.5(a) of this Option Agreement and consents to the electronic delivery of the Plan documents and the delivery of the Grant Notice and Exercise Notice, as described in Section 13.5(a). The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 13.5(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 13.5(a).

13.6 **Integrated Agreement.** The Grant Notice, this Option Agreement and the Plan, together with any employment, service or other agreement between the Participant and a Participating Company referring to the Option, shall constitute the entire understanding and agreement of the Participant and the Participating Company Group with respect to the subject matter contained herein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Participating Company Group with respect to such subject matter. To the extent contemplated herein, the provisions of the Grant Notice, the Option Agreement and the Plan shall survive any exercise of the Option and shall remain in full force and effect.

13.7 **Applicable Law.** This Option Agreement shall be governed by the laws of the State of California as such laws are applied to agreements between California residents entered into and to be performed entirely within the State of California.

13.8 **Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Participant: _____

Date: _____

STOCK OPTION EXERCISE NOTICE

PDL BioPharma, Inc.
Stock Administrator
1400 Seaport Boulevard
Redwood City, CA 94063

Ladies and Gentlemen:

1. **Option.** I was granted a nonstatutory stock option (the *"**Option**"*) to purchase shares of the common stock (the *"**Shares**"*) of PDL BioPharma, Inc. (the *"**Company**"*) pursuant to the Company's 2005 Equity Incentive Plan (the *"**Plan**"*), my Notice of Grant of Stock Option (the *"**Grant Notice**"*) and my Stock Option Agreement (the *"**Option Agreement**"*) as follows:

Date of Grant:

Number of Option Shares:

Exercise Price per Share: $

2. **Exercise of Option.** I hereby elect to exercise the Option to purchase the following number of Shares, all of which are Vested Shares in accordance with the Grant Notice and the Option Agreement:

Total Shares Purchased:

Total Exercise Price (Total Shares X Price per Share) $

3. **Payments.** I enclose payment in full of the total exercise price for the Shares in the following form(s), as authorized by my Option Agreement:

o Cash: $

o Check: $

o Tender of Company Stock: Contact Plan Administrator

4. **Tax Withholding.** I authorize payroll withholding and otherwise will make adequate provision for the federal, state, local and foreign tax withholding obligations of the Company, if any, in connection with the Option.

5. **Participant Information.**

My address is:

My Social Security Number is:

---

6. **Binding Effect.** I agree that the Shares are being acquired in accordance with and subject to the terms, provisions and conditions of the Grant Notice, the Option Agreement and the Plan, to all of which I hereby expressly assent. This Agreement shall inure to the benefit of and be binding upon my heirs, executors, administrators, successors and assigns.

Very truly yours,

_____
(Signature)

Receipt of the above is hereby acknowledged.

PDL BioPharma, Inc.

By: _____

Title: _____

Dated: _____

Exhibit 10.2

PDL BIOPHARMA, INC.
NOTICE OF GRANT OF STOCK OPTION

The Participant has been granted an option (the *"**Option**"*) to purchase certain shares of Stock of PDL BioPharma, Inc. (***"PDL"***) pursuant to PDL's 2005 Equity Incentive Plan (the *"**Plan**"*), as follows:

Participant: L. Patrick Gage

Date of Grant: November 16, 2007

Number of Option Shares: 100,000

Exercise Price: $18.03

Initial Vesting Date: The date one (1) month after October 1, 2007

Option Expiration Date: The date seven (7) years after the Date of Grant

Tax Status of Option: Nonstatutory Stock Option

Vested Shares: Except as provided in the Stock Option Agreement, the number of Vested Shares (disregarding any resulting fractional share) as of any date is determined by multiplying the Number of Option Shares by the *"**Vested Ratio**"* determined as of such date as follows:

	Vested Ratio
Prior to Initial Vesting Date	0
On Initial Vesting Date, provided the Participant's Service has not terminated prior to such date	1/24
Plus	
For each additional full month of the Participant's continuous Service from Initial Vesting Date until the Vested Ratio equals 1/1, an additional	1/24

Adjustments to Vested Ratio: PDL may adjust the Vested Ratio to account for any periods of part-time Service as an Employee.

Termination of Unvested Option: Except as may otherwise be provided by the Board, upon termination of the Participant's Service as an Employee, the Option shall terminate immediately with respect to shares that are not Vested Shares. However, provided the Participant's Service continues uninterrupted in a capacity other than as an Employee, the Option shall continue in accordance with the terms of the Stock Option Agreement with respect to any Vested Shares. Upon termination of the Participant's Service, the Option shall terminate in accordance with the terms of the Stock Option Agreement.

By their signatures below or by electronic acceptance or authentication in a form authorized by PDL, PDL and the Participant agree that the Option is governed by this Grant Notice and by the provisions of the Plan and the Stock Option Agreement, both of which are made a part of this document. The Participant acknowledges that copies of the Plan, the Stock Option Agreement and the prospectus for the Plan are available on PDL's internal web site and may be viewed and printed by the Participant for attachment to the Participant's copy of this Grant Notice. The Participant represents that the Participant has read and is familiar with the provisions of the Plan and the Stock Option Agreement, and hereby accepts the Option subject to all of their terms and conditions.

PDL BioPharma, Inc.

By: /s/ Andrew Guggenhime
Andrew Guggenhime
Senior Vice President and Chief Financial Officer

Address: 1400 Seaport Boulevard
Redwood City, California 94063

Participant

/s/ L. Patrick Gage
Signature

Date

Address

ATTACHMENTS: 2005 Equity Incentive Plan, as amended to the Date of Grant; Stock Option Agreement, Exercise Notice and Plan Prospectus

Exhibit 10.3

[PDL Letterhead]

February 16, 2007

Dr. Mark McCamish
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Dear Mark:

On behalf of PDL BioPharma, Inc., I am pleased to extend you an offer for the position of Senior Vice President and Chief Medical Officer reporting to Mark McDade, CEO. Your appointment as an officer of PDL is subject to approval by PDL's Board of Directors.

The monthly salary for this position is $30,000.00 ($360,000.00/annually). We offer our employees an attractive benefits package, including a comprehensive medical policy and dental plan, as well as life insurance coverage. You are also eligible to participate in PDL's 2007 performance bonus program (payable in 2008), with an annual target bonus

You will also receive options to purchase 85,000 shares of PDL BioPharma, Inc., Common Stock under a PDL stock option plan. The options will vest over four years, with one-fourth of the options vesting after one year of employment and the remainder vesting in equal monthly increments over the remaining three years. In addition, you will receive 7,500 shares of restricted stock, which vest annually over four years. This offer is subject to the approval of the Board of Directors and your execution of our standard Stock Option Agreement.

PDL is prepared to offer you a hiring bonus of $100,000.00, less applicable taxes. The bonus amount shall be payable and included with your first paycheck from PDL. If you voluntarily resign your position or your employment is terminated for cause prior to your one-year anniversary with PDL, $100,000.00 will be immediately due and payable to PDL. If you voluntarily resign your position or your employment is terminated for cause after your one-year anniversary but prior to your two-year anniversary with PDL, $50,000 will be immediately due and payable to PDL.

PDL will also provide you with a $55,000 relocation bonus, less applicable taxes. If you voluntarily resign your position or your employment is terminated for cause prior to your one-year anniversary with PDL, the entire amount will be immediately due and payable to PDL. If you voluntarily resign your position or your employment is terminated for cause after your one-year anniversary but prior to your two-year anniversary with PDL, $27,500 will be immediately due and payable to PDL.

For purposes of federal immigration law, you will be required to provide PDL documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire. In addition, this offer is contingent upon the successful completion of a background check.

As a PDL BioPharma employee, you are free to resign at any time, just as PDL BioPharma is free to terminate your employment at any time, with or without cause. There will be no express or implied agreements to the contrary.

To indicate your acceptance of our offer, please sign and date one copy of this letter in the space provided below and return it to Laurie Torres, in the enclosed envelope by the date indicated below. This letter, along with an agreement relating to proprietary rights between you and PDL, sets forth the terms of your employment with PDL and supersedes any prior representations or agreements, whether written or oral. This letter may not be modified or amended except by a written agreement, signed by PDL and by you.

We are very excited at the prospect of your joining PDL BioPharma as a key contributor. This offer will remain open until February 20, 2007, at which time it will expire if not previously accepted.

Sincerely,

/s/ Mark McDade
Mark McDade
CEO

/s/ Mark McCamish
Dr. Mark McCamish

17 Feb 2007
Date

July 18, 2000

Mr. Jaisim Shah
***
***

Dear Jaisim:

On behalf of Protein Design Labs, Inc., I am pleased to extend to you an offer for the position of Vice President, Marketing reporting to Daniel Levitt, President, Research and Development.

The monthly salary for this position is $18,750.00 ($225,000.00/annually). We offer our employees an attractive benefits package, including a comprehensive medical policy and dental plan, as well as life insurance coverage.

PDL is prepared to offer you reasonable relocation assistance from New Jersey to the San Francisco Bay Area, including movement of your household goods (packing, shipping and unloading of household goods) and the shipment of two automobiles (if you are not driving one of them across country). The cost of shipping the cars shall not exceed the low blue book value. Arrangements will be made by PDL.

In addition, PDL agrees to provide reimbursement for reasonable expenses incurred during a five-day house hunting trip for your and your spouse to the Bay Area. The trip will include lodging, meals and a rental car for five days. Again, these arrangements will be made by PDL.

PDL will also pay the airfare for your and your spouse's final trip to the Bay Area. If you prefer to drive, PDL will provide you with a stipend to cover gas, hotel, and food that would be equivalent to the cost of the plane tickets. Arrangements will be made by PDL.

Upon arriving in the Bay Area, PDL is prepared to offer you a temporary housing allowance covering up to $2,000 in expenses, each month for six (6) months. If you prefer, you can use this money for a mortgage differential instead of temporary housing for up to six (6) months. Additionally, PDL is prepared to offer you a storage allowance covering up to $2,000 in expenses, each month for six (6) months.

If you terminate your employment with PDL anytime during your first year of employment, you must repay the amount you received for relocation in full, within fifteen (15) days of leaving the Company.

PDL will extend to you a loan with a principal amount of up to $50,000 toward the purchase of a home in the Bay Area. The loan may only be used within the first year of your employment with PDL, and will be made upon your execution of an appropriate promissory note when you purchase a home in the Bay Area. The loan will bear interest at the lowest rate permissible by law to avoid imputed interest, and will be repayable as follows: on the first anniversary of the loan, all

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then-accumulated interest will be due; on the second anniversary of the loan, all then-accumulated interest will be due; on the third anniversary of the loan, 50% of the principal amount, plus all then-accumulated interest will be due; and on the fourth anniversary of the loan, the balance of all principal and accumulated interest will be due. The full amount of the principal and any accumulated interest will be immediately due and payable upon your termination of employment with PDL for any reason.

PDL will extend to you an additional loan with a principal amount of up to $50,000 toward the purchase of a home in the Bay Area. The loan must be used within the first year of your employment at PDL, and will be made upon your execution of an appropriate promissory note. The loan will bear interest at the lowest rate permissible by law to avoid imputed interest. Accumulated interest will be forgiven annually on the anniversary date of the loan, if, on each such date, you are still an employee of PDL. The entire principal amount will be forgiven on the fourth anniversary date of the loan if you are then still an employee of PDL. If your employment with PDL is terminated for any reason prior to the fourth anniversary date of the loan, the full amount of the principal and any accumulated interest will be immediately due and payable to PDL.

PDL will extend to you a bridge loan toward the purchase of a home in the Bay Area. The amount of this loan shall not exceed $100,000. The loan will be made upon the execution of an appropriate promissory note. The loan will bear interest at the lowest rate permissible by law to avoid imputed interest. The entire principal amount and all accumulated interest will be immediately due and payable the sooner of either the sale of your current residence or six (6) months after your first day of employment with PDL.

In addition, PDL is prepared to offer you a hiring bonus of $40,000.00 payable and included in your first paycheck from PDL. If your employment will PDL is terminated for any reason prior to your second anniversary with PDL, the entire $40,000.00 will be immediately due and payable to PDL.

In addition to our salary and benefits packages, I am pleased to offer to you options to purchase 40,000 shares of Protein Design Labs Common Stock under a PDL stock option plan. This offer is subject to the approval of the Board of Directors and your execution of our standard Stock Option Agreement. The options will vest over four years, with one-fourth of the options vesting after one year of employment and the remainder vesting in equal monthly increments over the remaining three years. The exercise price will be equal to the fair market value of the stock on the date the Board approves the stock offer.

For purposes of federal immigration law, you will be required to provide PDL documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire.

As a Protein Design Labs employee, you are free to resign at any time, just as Protein Design Labs is free to terminate your employment at any time, with or without cause.

To indicate your acceptance of our offer, please sign and date one copy of this letter in the space provided below and return it to Cheryle Johnson, in the enclosed envelope by the date indicated below. This letter, along with an agreement relating to proprietary rights between you and PDL, sets forth the terms of your employment with PDL and supersedes any prior representations or agreements, whether written or oral. This letter may not be modified or amended except by a written agreement, signed by PDL and by you.

We are very excited at the prospect of your joining Protein Design Labs as a key contributor. This offer will remain open until July 24, 2000, at which time it will expire if not previously accepted.

Sincerely,

/s/ Daniel Levitt
Daniel Levitt, President, Research and Development

/s/ Jaisim Shah
Jaisim Shah

July 20, 2000
Date

Exhibit 10.5

CONFIDENTIAL PROVISIONS REDACTED

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

PDL BIOPHARMA, INC.,
a Delaware corporation

and

EKR THERAPEUTICS, INC.,
a Delaware corporation

Dated as of February 4, 2008

CONFIDENTIAL TREATMENT REQUESTED

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* Certain information on this page has been omitted and filed separately with the SEC. Confidential treatment has been requested with respect to the omitted portions.

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CONFIDENTIAL TREATMENT REQUESTED

LIST OF EXHIBITS, ATTACHMENT AND SCHEDULES

EXHIBITS

ATTACHMENTS

DISCLOSURE SCHEDULES

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of February 4, 2008 (the "Effective Date") between PDL BioPharma, Inc., a Delaware corporation ("Seller") and EKR Therapeutics, Inc., a Delaware corporation ("Buyer").

RECITALS

A. Seller is engaged in the business (the "Business") of developing, selling, marketing and supporting its Cardene IV®, Cardene SR®, Retavase® and Ularitide products (the "CV Products").

B. Seller desires to sell, transfer and assign to Buyer, and Buyer wishes to acquire, all right, title and interest in and to the CV Products and certain assets related to the operation of the Business, in exchange for consideration consisting of cash and the assumption of certain Liabilities related to the Business, pursuant to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties to this Agreement agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Accounts Payable" shall mean all obligations of Seller or any of its Affiliates with respect to accounts payable and notes payable, including without limitation, those created or arising in respect of the Business.

1.2 "Accounts Receivable" shall mean all of Seller's trade accounts receivable, and all notes receivable or evidences of indebtedness payable to Seller created or arising in respect of the sale of the Marketed Products.

1.3 "Affiliate" with respect to any party shall mean any entity that is directly or indirectly controlling, controlled by or under common control with such party.

1.4 "Agreement" shall have the meaning given in the Preamble.

1.5 "Assets" shall have the meaning given in Article 2.

1.6 "Assumed Contracts" shall have the meaning given in Section 2.1(p).

1.7 "Assumed Liabilities" shall have the meaning given in Section 2.3.

1.8 "Books and Records" shall mean all pricing lists, customer correspondence (excluding e-mail and other electronic correspondence not readily available in hard copy) and

other books and records, in any form, used solely and specifically with respect to the CV Products by Seller or any of Seller's Affiliates.

1.9 "Business" shall have the meaning given in the Recitals.

1.10 "Business Employee" shall have the meaning given in Section 5.1(a).

1.11 "Buyer" shall have the meaning given in the Preamble.

1.12 "Buyer Indemnitee(s)" shall have the meaning given in Section 13.3.

1.13 "Cardene" shall mean Cardene IV and Cardene SR.

1.14 "Cardene Drug Product" shall mean labeled or unlabelled vials containing the active pharmaceutical ingredient nicardipine hydrochloride.

1.15 "Cardene IV" shall mean each presentation of any pharmaceutical preparation (including formulation changes and production intermediates) containing the pharmaceutical product known as "Cardene IV" containing the active ingredient nicardipine hydrochloride, whether registered, marketed or in development by Seller, as of the Closing Date.

1.16 "Cardene Packaged Product" shall mean Cardene in the Product Inventory purchased by Buyer hereunder that is packaged and labeled for sale to the end user.

1.17 "Cardene [****]* Product" shall mean any formulation of Cardene IV [****]*.

1.18 "Cardene Product Inventory" shall mean all inventory owned by Seller or its Affiliates of bulk active pharmaceutical ingredient nicardipine hydrochloride, Cardene Packaged Product and Cardene Drug Product, in existence as of the Closing.

1.19 "Cardene SR" shall mean each presentation of any pharmaceutical preparation (including formulation changes and production intermediates) containing the pharmaceutical product known as "Cardene SR" containing the active ingredient nicardipine hydrochloride, whether registered, marketed or in development by Seller, as of the Closing Date.

1.20 "Claim" shall have the meaning given in Section 13.4.

1.21 "Clinical Data" shall have the meaning given in Section 2.1(k).

1.22 "Clinical Trial" shall mean a clinical trial conducted by or on behalf of Seller or its Affiliates, or pursuant to any Assumed Contract, in each case in which the product Ularitide is administered to a human.

1.23 "Clinical Trial Materials" shall mean the product Ularitide and the placebo for this product manufactured by or on behalf of Seller or its Affiliates for use in preclinical studies

* Certain information on this page has been omitted and filed separately with the Sec. Confidential treatment has been requested with respect to the omitted portions.

CONFIDENTIAL TREATMENT REQUESTED

or Clinical Trials, whether in bulk, formulated or finished form and whether in existence on the Effective Date or manufactured between the Effective Date and Closing Date.

1.24 "Clinical Trial Study Reports" shall mean all reports or summaries of all data, records and documents resulting from the Clinical Trials for the product Ularitide.

1.25 "Closing" shall have the meaning given in Section 4.1.

1.26 "Closing Date" shall have the meaning given in Section 4.1.

1.27 "Confidential Information" shall have the meaning ascribed to it in the Confidentiality Agreement.

1.28 "Confidentiality Agreement" shall mean that certain Mutual Confidentiality Agreement between Buyer and Seller dated August 28, 2007.

1.29 "Copyrights" shall have the meaning set forth in Section 2.1(d).

1.30 "[****]*" shall mean product returns, charge-backs, rebates or Medicaid, Medicare or other reimbursements, or similar claims, with respect to [****]*sold by Seller or its Affiliates for which [****]*.

1.31 "Customer Orders" shall mean orders for Packaged Product from customers of Seller or any of Seller's Affiliates.

1.32 "CV Products" shall have the meaning given in the Recitals.

1.33 "Drug Products" shall mean Cardene Drug Product and Retavase Drug Product.

1.34 "Effective Date" shall mean the date first set forth in the opening paragraph of this Agreement.

1.35 "Employee Benefit Plans" shall mean any employee benefit plan, program, policy, practices, agreement or other arrangement providing benefits to any current or former employee, officer or director of Seller or its Affiliates or any beneficiary or dependent thereof that is sponsored or maintained by Seller or its Affiliates or to which Seller or its Affiliates contributes or is obligated to contribute, whether or not written, including without limitation any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, any employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA) and any written employment, severance, retention, termination, change in control, consulting, retirement, bonus or other incentive compensation, stock purchase, stock option, stock award or other equity-based compensation, leave of absence, lay-off, cafeteria, health, accident, disability, workman's compensation or other insurance, vacation or other employee benefit agreement, plan or policy (other than any governmental program), and any

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related trust, as to which Seller has or may have any obligation or liability, contingent or otherwise.

1.36 "Escrow Agent" shall have the meaning set forth in Section 3.2.

1.37 "Escrow Agreement" shall have the meaning set forth in Section 3.2.

1.38 "Escrow Amount" shall have the meaning set forth in Section 3.1(c).

1.39 "Excluded Assets" shall have the meaning given in Section 2.2.

1.40 "Excluded Liabilities" shall have the meaning given in Section 2.4.

1.41 "FDA" shall mean the United States Food and Drug Administration, or any successor agency or entity thereto that may be established hereafter.

1.42 "FD&C Act" shall mean the U.S. Federal Food, Drug and Cosmetics Act, 21 USC § 321 et seq, as amended.

1.43 "GAAP" shall mean the United States generally accepted accounting principles in effect from time to time, consistently applied.

1.44 "Governmental Entity" shall mean any court, tribunal, arbitrator, authority, agency, commission, regulatory, official or other instrumentality of the government of the United States or of any foreign country, any state or any political subdivision of any such government (whether state, provincial, county, city, municipal or otherwise).

1.45 "HSR" shall mean the United States Hart-Scott-Rodino Antitrust Improvements Act of l976, as amended, and related rules.

1.46 "HSR Filings" shall have the meaning given in Section 8.1.

1.47 "IND" shall mean, with respect to each CV Product, the investigational new drug application identified on Attachment 2.1(e) hereto.

1.48 "Initial FDA Approval" shall mean the first issuance by the FDA of a written approval that [****]*.

1.49 "Initial Purchase Price" shall have the meaning given in Section 3.1(a).

1.50 "Intellectual Property shall mean (i) Patents; (ii) Licensed IP Rights; (iii) Trademarks and Trademark Registrations; (iv) Copyrights; and (v) Trade Secrets.

1.51 "Knowledge" shall mean, whenever any representation or warranty is made by Seller or Buyer "to the Knowledge" of the Seller or Buyer, (i) the actual knowledge of the

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officers of the Seller or Buyer, respectively, and (ii) the knowledge that any such person referenced in clause (i) hereof, as a prudent business person, would have obtained in the usual course of the performance of his or her professional responsibilities to such party.

1.52 "Liabilities" shall mean liabilities of any kind or nature, primary or secondary, direct or indirect, absolute or contingent, known or unknown, liquidated or unliquidated, including but not limited to any liabilities for claims of product liability, personal injury or death, liability in tort or contract (including unripened liabilities due to past actions or sales), indebtedness, and any FDA or other Governmental Entity action or notification, and all costs and expenses (including reasonable attorneys' fees), incurred in connection with the defense of any such claims.

1.53 "Licensed IP Rights" shall have the meaning given in Section 2.1(b).

1.54 "Litigation Cooperation Agreement" shall mean the agreement between Buyer and Seller, substantially in the form attached hereto as Exhibit I, pursuant to which Buyer assumes control of all aspects of the Sun Litigation, Seller agrees to assist Buyer as required, at Buyer's expense, in such Sun Litigation, and Buyer agrees to indemnify Seller with respect to Seller's post-Closing assistance in such litigation.

1.55 "Marketed Products" shall mean Cardene IV, Cardene SR and Retavase.

1.56 "Marketing and Promotional Documents" shall have the meaning given in Section 2.1(i).

1.57 "Material Adverse Change" and "Material Adverse Effect" shall mean any event or situation that has a material adverse change or effect, respectively, on the operations, assets, Liabilities, results of operations, cash flows or financial condition, or relations with material customers or material suppliers, of the Business, taken as a whole, other than any such change or effect resulting from or arising in connection with (i) [****]*.

1.58 "Milestone and Revenue Payments" shall have the meaning given in Section 3.1(b).

1.59 "Milestone Payments" shall have the meaning given in Section 3.1(b).

1.60 "Net Sales" shall mean, the gross invoiced sales amount of the Cardene [****]* Product or any Ularitide product, as applicable, [****]*, and in each case less the following items ("Net Sales Adjustments") as applicable to the Cardene [****]* Product or the Ularitide product, as applicable, to the extent such items are reasonable and customary under industry practices and [****]*and are consistent in application with [****]*:

(a) actual credits or allowances granted upon returns, rejections or recalls (due to spoilage, damage, expiration of useful life or otherwise), retroactive price reductions, or billing corrections during the accounting period in which such sales are recorded;

(b) invoiced freight, postage, shipping and insurance, handling, export fees or tariffs, customs expenses and other transportation costs actually incurred by Buyer;

(c) credits or allowances actually granted including, without limitation, quantity, cash and other trade discounts (collectively, "Credits"), provided, however, Credits shall not include any credit, allowance or discount given with respect to the sale of the [****]*;

(d) taxes (including, without limitation, sales, value-added or excise taxes, but excluding income taxes imposed on the income of Buyer or its Affiliates and withholding taxes imposed on amounts payable to Buyer or its Affiliates), tariffs, customs duties, surcharges and other governmental charges incurred in connection with the production, sale, transportation, delivery, use, exportation or importation of CV Products that are incurred at time of sale or are directly related to the sale;

(e) discounts, refunds, rebates, charge backs, fees, credits or allowances (including, without limitation, amounts incurred in connection with government-mandated rebate and discount programs, third party rebates and charge backs, hospital buying group/group purchasing organization administration fees and managed care organization rebates) actually deducted from payment of invoices by customers or paid to customers during the accounting period in which such sales are recorded, offset by any such amounts that had been deducted from invoices or paid to customers in error and have been paid back to Buyer; and

(f) distribution fees and sales commissions to third parties, actually paid or incurred at the time of sale and which effectively reduce the selling price,

all in accordance with standard allocation procedures, allowance methodologies and accounting methods consistently applied. For the avoidance of doubt, the transfer of any Cardene [****]* Product by Buyer or its Affiliates to another Affiliate of Buyer for purposes of sale to an independent third party shall not be considered a sale; in such cases, Net Sales shall be determined based on the gross invoiced sales by such Affiliate to an independent third party, less the Net Sales Adjustments allowed under this Section.

1.61 "Net Sales Adjustments" shall have the meaning given in Section 1.60.

1.62 "NDA" shall mean, with respect to each CV Product, the new drug application identified on Attachment 2.1(e) hereto.

1.63 "Non Product-Specific Manufacturing Information" shall have the meaning given in Section 2.1(g).

1.64 "Packaging Inventory" shall have the meaning given in Section 2.1(v).

1.65 "Packaged Products" shall mean Cardene Packaged Product and Retavase Packaged Product.

1.66 "Patents" shall have the meaning given in Section 2.1(a).

1.67 "[****]* shall mean the [****]*

1.68 "Product Inventory" shall mean Cardene Product Inventory and Retavase Product Inventory.

1.69 "Product-Specific Manufacturing Information" shall have the meaning given in Section 2.1(f).

1.70 "Product Specifications" shall mean the specifications for bulk active pharmaceutical ingredients for the respective Marketed Products, and for the respective Drug Products, as set forth in Attachments 1.70(a) and (b), respectively.

1.71 "Purchase Price" shall have the meaning given in Section 3.1.

1.72 "Raw Materials and WIP" shall mean all of the raw materials and work in progress owned by Seller or its Affiliates for use in the manufacture of the CV Products, in existence as of the Closing.

1.73 "Registrations" shall have the meaning given in Section 2.1(e).

1.74 "Research and Development Materials" shall have the meaning given in Section 2.1(h).

1.75 "Retavase" shall mean each presentation of any pharmaceutical preparation (including formulation changes and production intermediates) containing the active pharmaceutical ingredient reteplase, whether registered, marketed or in development by Seller or its Affiliates, as of the Closing Date.

1.76 "Retavase Drug Product" shall mean labeled or unlabelled vials containing the active pharmaceutical ingredient reteplase.

1.77 "Retavase Packaged Product" shall mean Retavase in the Product Inventory purchased by Buyer hereunder that is packaged and labeled for sale to the end user.

1.78 "Retavase Product Inventory" shall mean all of the inventory owned by Seller or its Affiliates of bulk active pharmaceutical ingredient reteplase, Retavase Packaged Product and Retavase Drug Product, in existence as of the Closing.

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1.79 "Revenue Payments" shall have the meaning given in Section 3.1(b).

1.80 "SEC" shall mean the United States Securities and Exchange Commission.

1.81 "Seller" shall have the meaning given in the Preamble.

1.82 "Seller Indemnitees" shall have the meaning given in Section 13.2.

1.83 "[****]* shall mean the [****]*.

1.84 "Sun Litigation" shall mean all rights relating to the patent infringement lawsuit in the United States District Court for the District of New Jersey (New Jersey Court) filed by Seller against Sun Pharmaceutical Industries Ltd. ("Sun") seeking, among other things, to enjoin Sun's infringement of Seller's United States Patent Number 5,164,405, titled "Nicardipine pharmaceutical composition for parenteral administration" and to stay any sale of Sun's Abbreviated New Drug Application product until at least the expiration of such patent, a related lawsuit filed by Seller in United States District Court for the Eastern District of Michigan, and all other related litigation between Seller and Sun, and any claims and counterclaims associated therewith.

1.85 "Survival Date" shall have the meaning given in Section 13.1.

1.86 "Tangible Assets" shall have the meaning given in Section 2.1(l).

1.87 "Tax" and "Taxes" shall mean all present or future taxes, charges, fees, levies, or other assessments including, without limitation, income, excise, property, value added, real estate, sales, use, payroll, employment, unemployment, transfer, social security, alternative, add-on minimum and franchise taxes imposed by any federal, state, county, or local government, or a subdivision or agency thereof. Such term shall include any interest, penalties, or additions payable in connection with such taxes, charges, fees, levies, duties, or other assessments.

1.88 "Territory" (i) for Cardene shall mean the United States of America and its possessions and territories; (ii) for Retavase shall mean Canada and the United States of America and its possessions and territories; and (iii) for Ularitide shall mean worldwide.

1.89 "Third Party Consents" shall have the meaning given in Section 6.4.

1.90 "Trade Secrets" shall mean all technology, trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models, and methodologies that are related to the Business.

1.91 "Trademarks" shall mean all trademarks, service marks, trade names, names, slogans, taglines, logos, design marks, trade dress, product designs, and product packaging,

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including all applications for and registrations of the foregoing, and including those at common law that are related to the CV Products.

1.92 "Trademark Registrations" shall have the meaning given in Section 2.1(c).

1.93 "Transition Services Agreement" shall mean the transition services agreement to be entered into by Buyer and Seller, at the request of Buyer as contemplated in Section 8.7, whereby Seller shall, for fees specified therein, provide to Buyer certain services relating to the transition of the Business.

1.94 "Ularitide" shall mean each presentation of any pharmaceutical preparation (including formulation changes and production intermediates) containing the active pharmaceutical ingredient urodilatin, whether registered, marketed or in development by Seller or its Affiliates, as of the Closing Date.

1.95 "Worldwide Safety Reports" shall have the meaning given in Section 2.1(j).

ARTICLE 2

TRANSFER OF ASSETS; LICENSE AND SUBLICENSE

2.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, Seller shall sell, transfer, assign, convey, deliver, license or sublicense, as specified below, to Buyer, or shall cause to be sold, transferred, assigned, conveyed, delivered, licensed or sublicensed, as specified below, to Buyer, and Buyer shall acquire all of Seller's right, title and interest in and to the properties and assets of Seller identified in this Section 2.1 (collectively, the "Assets").

(a) Patents. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to the patent filings related to the CV Products listed in Attachment 2.1(a), and any patents of addition, re-examinations, reissues, extensions, granted supplementary protection certifications, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patents and any and all divisionals, continuations and continuations-in-part, and any patents issuing therefrom, as well as any patent applications related thereto (collectively, the "Patents"). Seller hereby retains a royalty-free right and license, including the right to sublicense, under the Patents, solely to the extent necessary for, and solely for the purposes of, performing Seller's obligations under this Agreement and the Transition Services Agreement and only until the completion of Seller's obligations hereunder and thereunder.

(b) Licensed IP Rights. Upon Closing, Seller shall transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights under all patents, know-how and other intellectual property rights which Seller has a right under contract to use and which are used in the Business and those intellectual property rights contained in the license agreements included as part of the Assumed Contracts or as otherwise set forth on Attachment 2.1(b), but subject to any restrictions and obligations in

such license agreements (the "Licensed IP Rights"). Seller hereby retains a royalty-free right and license under the Licensed IP Rights for use in the Business, solely to the extent necessary for, and solely for the purposes of, performing Seller's obligations under this Agreement and the Transition Services Agreement, and only until the completion of Seller's obligations hereunder and thereunder.

(c) Trademark Registrations. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to all Trademarks used in the Business and as set forth on Attachment 2.1(c), together with (i) all common law rights to the Trademarks, (ii) the goodwill of the Business symbolized by the Trademarks, (iii) all causes of actions, claims and demands or other rights for, or arising from any infringement, dilution, unfair competition, or other violation, including past infringement, dilution, unfair competition, or other violation, of the Trademarks, and (iii) all rights corresponding thereto throughout the world (the "Trademark Registrations").

(d) Copyrights. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to registered and unregistered copyrights, including all related registrations, applications and common law rights, in any labels, product marketing materials or other copyrighted works related to the CV Products (the "Copyrights").

(e) Registrations. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to the regulatory files and approvals, registrations and governmental authorizations, each NDA, each IND, compliance notices, licenses and permits, and any applications to the FDA or the comparable foreign law or bodies in effect or pending at the Closing Date, and all materials and information relating to the FDA and other Governmental Entity approvals for the CV Products as set forth on Attachment 2.1(e), and all information contained therein (collectively, the "Registrations").

(f) Product-Specific Manufacturing Information. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer all of Seller's rights, title and interest in and to all of Seller's manufacturing information (the "Product-Specific Manufacturing Information") used solely and exclusively in the Business. Seller shall retain a non-exclusive license to use Product-Specific Manufacturing Information, solely for purposes of fulfilling its obligations under this Agreement and the Transition Services Agreement, and only until completion of Seller's obligations hereunder and thereunder.

(g) Non Product-Specific Manufacturing Information. Upon Closing, Seller shall grant, or shall cause to be granted to Buyer, a perpetual, paid up, irrevocable, royalty-free, non-exclusive license, with the right to sublicense, to use, only in the Business, any manufacturing information that is used by Seller both in the Business and also in other business activities of Seller (the "Non-Product Specific Manufacturing Information"). Seller shall retain a non-exclusive license to use Non-Product-Specific Manufacturing Information in other business activities of Seller.

(h) Research and Development Materials. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, (i) originals of all documents and electronically stored information (excluding e-mails or other electronic correspondence not readily available in hard copy) to the extent related to the research and development of the CV Products that are owned or controlled by Seller or its Affiliates and any of their respective agents, and (ii) copies of all other documents and electronically stored information (excluding

e-mails or other electronic correspondence not readily available in hard copy) to the extent related to the research and development of the CV Products (the "Research and Development Materials"). After Closing, Seller shall retain a right to use the Research and Development Materials, solely for purposes of fulfilling its obligations under this Agreement and the Transition Services Agreement, and only until completion of Seller's obligations hereunder and thereunder.

(i) Marketing and Promotional Documents. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all marketing and promotional documents and information (including electronic information, but excluding e-mails or other electronic correspondence not readily available in hard copy) related to the CV Products existing on the Closing Date, owned by Seller or its Affiliates, such as customer lists, marketing and promotional plans, documents and materials, material contained on Seller's internet sites**,** field force training manuals and materials, and the like, solely to the extent relating exclusively to the Business (the "Marketing and Promotional Documents"). Buyer's use of the Marketing and Promotional Documents shall be subject to Section 10.12.

(j) Worldwide Safety Reports. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all worldwide safety reports in the possession or control of Seller or its Affiliates with respect to the CV Products in existence as of the Closing (the "Worldwide Safety Reports").

(k) Clinical Data. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all clinical data related to the CV Products and which is contained in Seller's databases or otherwise in Seller's possession or control (the "Clinical Data").

(l) Tangible Assets. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, certain tangible assets, as listed in Attachment 2.1(l) (the "Tangible Assets").

(m) Domain Names. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to the domain names used primarily in the Business and listed in Attachment 2.1(m) (collectively, the "Domain Names").

(n) Product Inventory. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, the Product Inventory.

(o) Raw Materials and WIP. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, the Raw Materials and WIP.

(p) Assumed Contracts. Upon Closing, Seller shall sell, transfer, assign, convey and deliver or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all rights and benefits of Seller in existence as of the Closing Date or arising after the Closing Date under the contracts listed in Attachment 2.1(p) (the "Assumed Contracts"), including any rights to Intellectual Property. The Assumed Contracts shall be deemed to include all purchase orders and change orders related thereto.

(q) Clinical Trial Materials. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to the Clinical Trial Materials.

(r) Clinical Trial Study Reports. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights, title and interest in and to the Clinical Trial Study Reports.

(s) Sun Litigation. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's rights relating to the Sun Litigation, including, without limitation, all documents and information and other things gathered or produced by any party in relation thereto.

(t) Books and Records. Upon Closing, Seller shall sell, transfer, assign, convey and deliver, or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer all Books and Records.

(u) Customer Orders. Upon Closing, Seller shall sell, transfer, assign, convey and deliver or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all of Seller's right, title and interest in all unfilled orders for the CV Products, including without limitation, all unfilled Customer Orders as of the Closing Date (i.e. Customer Orders to the extent that (i) the Packaged Products at issue have not been shipped to the applicable customer as of the Closing Date and (ii) Buyer (rather than Seller or any of its Affiliates) would be paid by the applicable customer after shipment by Buyer following the Closing Date), a list of which shall be provided to Buyer within [****]* after the Closing Date.

(v) Packaging Inventory. Upon Closing, Seller shall sell, transfer, assign, convey and deliver or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer, all packaging material for the Marketed Products, including all package labels and product inserts used in connection with the Marketed Products owned or controlled by Seller or its Affiliates as of the Closing (the "Packaging Inventory").

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(w) Other Intellectual Property. Upon Closing, Seller shall sell, transfer, assign, convey and deliver or shall cause to be sold, transferred, assigned, conveyed and delivered to Buyer all of Seller's rights, title and interest in and to the Trade Secrets and other intellectual property not hereto forth assigned that are used solely in the Business.

2.2 Excluded Assets. Buyer hereby acknowledges that Seller is not transferring hereunder any assets, rights or interests of Seller or its Affiliates not specifically set forth in Section 2.1 (collectively, the "Excluded Assets"), including, without limitation:

(a) any contracts or agreements with any third party that are not Assumed Contracts or identified in Section 2.1(b);

(b) any assets or rights used in the research, development, manufacture, control, packaging or release, marketing or sale of products other than the CV Products, excluding such assets or rights of Seller or its Affiliates that were used primarily in, or were otherwise necessary for the conduct of, the Business on the Effective Date that are either (i) Assets (transferred to Buyer pursuant to Section 2.1) or (ii) are covered in Section 10.1(a);

(c) any assets or rights, including, without limitation, technical information and intellectual property, that are not used exclusively in the Business and are used in other business activities of Seller, excluding such assets or rights of Seller or its Affiliates that were used primarily in, or were otherwise necessary for the conduct of, the Business on the Effective Date that are either (i) Assets (transferred to Buyer pursuant to Section 2.1) or (ii) are covered in Section 10.1(a);

(d) equipment, computer software, and computer hardware, except as listed on Attachment 2.1(b) or Attachment 2.1(l);

(e) all Accounts Receivable arising on or prior to the Closing Date; and

(f) corporate records (financial statements, formation documents, stock records, board resolutions and minutes, and the like).

2.3 Assumed Liabilities. Buyer shall assume and agree to honor, pay and discharge when due only the following Liabilities of Seller (the "Assumed Liabilities"), and no others:

(a) all Liabilities of Seller under the Assumed Contracts, but only to the extent such Liabilities arise from any event, circumstance or condition occurring after the Closing Date;

(b) all Liabilities of Seller under the Registrations to be performed after the Closing Date, but only to the extent such Liabilities relate to any event, circumstances or conditions occurring after the Closing Date;

(c) all Liabilities relating to the Sun Litigation, other than (i) Liabilities that arise as a result of actions taken or omitted by Seller and its Affiliates on or prior to the Closing Date (unless taken or omitted with the consent of Buyer), and (ii) all fees, costs and expenses incurred by or on behalf of Seller or any of its Affiliates with respect to the Sun Litigation on or

prior to the Closing Date (including attorneys' fees);

(d) all other Liabilities (other than Excluded Liabilities) arising out of the conduct of the Business or arising out of or related to the Assets, but in each case solely to the extent such Liabilities are incurred or relate to events, circumstances, conditions, actions or activities occurring after the Closing Date, including, without limitation, any product liability, product warranty, product return, charge-back, rebate or Medicaid, Medicare or other reimbursements, or similar claim, related to the CV Products sold after the Closing Date;

(e) all [****]*

(f) all Liabilities relating to Taxes attributable to ownership of the Assets and operation of the Business during periods beginning after the Closing Date, but not including, for the avoidance of doubt, Taxes that are payable after the Closing Date relating to taxable periods, or portions thereof, ending on or prior to the Closing Date, determined, in the case of any period that includes but does not end on the Closing Date, on a pro rata per diem basis; and

(g) all costs and expenses incurred after the Closing Date in connection with or related to the[****]*, including without limitation, any and all work or agreements related thereto, and the [****]*relating to the [****]*, [****]*.

2.4 Excluded Liabilities. Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the transactions contemplated hereby, and shall have no liability for, any Liabilities of Seller or any of its Affiliates (including, without limitation, those related to the Business) of any kind, character or description whatsoever (the "Excluded Liabilities"). Seller shall discharge in a timely manner or shall make adequate provision for all of the Excluded Liabilities that affect the Business, Assets or Assumed Liabilities, provided that Seller shall have the ability to contest, in good faith, any such claim of liability asserted in respect thereof by any person or entity. Excluded Liabilities shall include, without limitation:

(a) all Taxes (other than Taxes that are Assumed Liabilities) including those that result from or have accrued in connection with the operation of the Business on or prior to the Closing Date;

(b) any Liability or obligation of Seller of any nature owed to any employees, directors, former employees, agents or independent contractors, whether or not employed by Buyer after the Closing, that (A) arises out of or relates to the employment or service provider relationship between Seller or its Affiliates (or any predecessor in interest) and any such individual(s) (including, but not limited to, claims for compensation, discrimination, harassment, or retaliation and any Liability under Seller's Employee Benefit Plans); or (B) arises out of or relates to events, circumstances or conditions occurring on or prior to the Closing Date (including the transactions contemplated by this Agreement);

(c) all Accounts Payable arising on or prior to the Closing Date;

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(d) Liabilities of Seller under the Assumed Contracts that were incurred, arose or became payable on or prior to the Closing Date;

(e) all Liabilities of Seller and its Affiliates under the Registrations, to be performed, or which relate to any event, circumstance or condition occurring, on or prior to the Closing Date;

(f) all Liabilities with respect to accrued expenses incurred on or prior to the Closing in connection with the CV Products or the Business;

(g) all Liabilities arising out of claims of third parties for damage or injury suffered as the result of defective products sold or manufactured on or prior to the Closing Date;

(h) all Liabilities incurred (i) up through the Closing Date and (ii) after the Closing Date [****]*, in connection with or related to the [****]*, including without limitation the [****]* and of any and all work and agreements relating thereto, and the [****]* relating the [****]*; and

(i) Liabilities of Seller and its Affiliates relating to or arising under this Agreement.

2.5 Risk of Loss. All risk of loss with respect to the Assets (whether or not covered by insurance) shall be on Seller or its Affiliates up to the time of Closing, whereupon such risk of loss shall pass to Buyer.

2.6 Taxes. All applicable sales, transfer, documentary, use, stamp, filing, recording, conveyance, excise, mortgage, documentary recording taxes and other similar taxes and fees that may be levied on the sale, assignment, transfer or delivery of the Assets to be sold and transferred as provided in this Agreement shall be borne by the parties equally. The parties shall cooperate with each other and use commercially reasonable efforts to minimize such Taxes.

2.7 Third-Party Consents. To the extent that any Assumed Contract, Intellectual Property or Registration is not assignable without the consent of another party, this Agreement shall not constitute an assignment or an attempted assignment thereof if such assignment or attempted assignment would constitute a breach thereof or a default thereunder. Seller and Buyer shall each use commercially reasonable efforts to obtain the consent of [****]*, to the extent required, for the assignment of any Assumed Contracts to which it is a party. Seller shall use its commercially reasonable efforts to obtain any and all consents necessary for the effective assignment to and assumption by Buyer of the Assumed Contracts, the Intellectual Property, the Registrations and the Assumed Liabilities, including the Third Party Consents set forth on Attachment 4.2(a) hereto and the consents set forth on Schedule 6.3 of the Disclosure Schedule. All such consents shall be in writing and executed counterparts thereof shall be delivered promptly to Buyer. If any such consent shall not be obtained, Seller shall cooperate with Buyer in any reasonable arrangement designed to provide for Buyer the benefits intended to be assigned

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to Buyer under the relevant Assumed Contract, Intellectual Property or Registration, including enforcement at the cost and for the account of Buyer of any and all rights of Seller against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise. If and to the extent that such arrangement cannot be made, Buyer shall have no obligation pursuant to Section 2.3 or otherwise with respect to any such Assumed Contract, Intellectual Property or Registration. The provisions of this Section 2.7 shall not affect the right of Buyer not to consummate the transactions contemplated by this Agreement if the condition to its obligations hereunder contained in Section 9.1 has not been fulfilled.

ARTICLE 3

CONSIDERATION

3.1 Purchase Price. As full consideration of Seller's sale, transfer, assignment, conveyance, delivery, license or sublicense of the Assets to Buyer, Buyer will assume the Assumed Liabilities and pay and deliver or cause to be paid and delivered to Seller, in the manner set forth in this Section, an aggregate purchase price (the "Purchase Price") equal to the sum of the Initial Purchase Price set forth in Section 3.1(a) and the Milestone and Revenue Payments, if applicable, set forth in Section 3.1(b).

(a) Initial Purchase Price. On the Closing Date, Buyer shall pay Seller Eighty Five Million United States Dollars ($85,000,000) (the "Initial Purchase Price"), less the Escrow Amount.

(b) Milestone and Revenue Payments. In addition to the payment made by Buyer pursuant to Section 3.1(a), after the Closing Date, Buyer shall make the following non-refundable cash payments to Seller, in each case, subject to the satisfaction of the respective milestones:

i. Cardene [****]* Product Approval Milestone Payment. Twenty Five Million United States Dollars ($25,000,000) shall become payable upon Buyer's receipt of the Initial FDA Approval, such payment to be made promptly, and in no event later than [****]*, after receipt of such approval.

ii. Revenue Milestone Payments.

(1) Thirty Million United States Dollars ($30,000,000) payable to Seller if and when the Net Sales of the Cardene [****]* Product in any twelve consecutive month period, calculated as of the end of each calendar month, first exceed Eighty Million United States Dollars ($80,000,000).

(2) Thirty Million United States Dollars ($30,000,000) payable to Seller if and when the Net Sales of the Cardene [****]* Product in any twelve consecutive

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month period, calculated as of the end of each calendar month, first exceed One Hundred Fifty Million United States Dollars ($150,000,000).

(3) Each payment pursuant to subsections (1) and (2) shall, if applicable, be made promptly, but no later than [****]*, following the occurrence of the relevant milestone.

The milestone payments under subsections (i) and (ii) of this Section 3.1(b) are collectively referred to as "Milestone Payments".

iii. Other Revenue Payments. Buyer shall pay to Seller, on a [****]* basis as provided in Section 3.3, (A) an amount equal to ten percent (10%) of the Net Sales of the Cardene [****]* Product from sales occurring after the Closing Date and prior to the earlier to occur of (i) December 31, 2014 and (ii) the [****]*, and (B) on a country-by-country basis, an amount equal to five (5%) of the Net Sales of any Ularitide product from sales occurring after the Closing Date and prior to the later to occur of (i) the expiration of the applicable exclusivity period in such country, and (ii) the expiration of the last Patent covering Ularitide in such country. The payments under this subsection iii of Section 3.1(b) are referred to as "Revenue Payments" and Revenue Payments and Milestone Payments are collectively referred to as "Milestone and Revenue Payments".

(c) Deposit in Escrow. At Closing, Buyer shall deliver cash from the Initial Purchase Price in the amount of Six Million United States Dollars ($6,000,000) (the "Escrow Amount") to the Escrow Agent pursuant to the Escrow Agreement, to be held and disbursed upon and subject to all of the terms and conditions set forth therein.

3.2 Method of Payment. The payments to be made pursuant to Section 3.1 shall be made by wire transfer in immediately available funds as follows:

(a) delivery of the Initial Purchase Price, less the Escrow Amount, to such account as Seller shall have designated to Buyer in writing not less than two (2) business days prior to the Closing Date, and any such payment shall be deemed to have been paid when recorded in the proper account;

(b) delivery to Wells Fargo Bank, National Association (the "Escrow Agent") of the Escrow Amount in accordance with the wire transfer instructions of the Escrow Agent delivered to Buyer in writing not less than two (2) business days prior to the Closing Date. The Escrow Amount shall be held in escrow by the Escrow Agent pursuant to the terms of an escrow agreement in substantially the form of Exhibit H attached hereto (the "Escrow Agreement") in order to provide a source for the payment of any [****]*. The Escrow Agreement shall provide for the release of any remaining escrow funds to Seller [****]* from the Closing Date [****]*; and

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(c) delivery of the Milestone and Revenue Payments to such account as Seller shall have designated to Buyer in writing not less than two (2) business days prior to the Closing Date (or such other account as designated by Buyer after Closing delivered pursuant to the notice provision herein).

3.3 Revenue Payments; Reports. Buyer shall pay to Seller, [****]*, any Revenue Payments that become due. Such payments will be accompanied by a report containing the following information as it pertains to the [****]* just ended:

(a) the gross sales of the Cardene [****]* Product (in the aggregate and separately stated for each selling party);

(b) the computation of the Net Sales of Cardene [****]* Product actually received by Buyer based on the U.S. dollar value determined in (a) above, including an accounting of any Net Sales Adjustments from the gross sales to arrive at the Net Sales amount, and the exchange rates used for converting foreign currency to U.S. dollars in accordance with Section 3.4 hereof;

(c) the computation of earned Revenue Payments; and

(d) such other information necessary to confirm the Revenue Payments payable pursuant to Section 3.1(b)(iii) as Seller may reasonably request.

If no earned Revenue Payments are due for a [****]*, Buyer will so report. At the end of the [****]* in which the Revenue Payments are no longer due, Buyer will provide to Seller a final written report that complies in all respects with this Section 3.3. Buyer will require each Affiliate and sublicensee to make appropriate reports to Buyer in a timely manner to enable Buyer to comply with this Section 3.3. Buyer shall provide Seller a similar report containing the information in subsections (a) and (b) above upon payment of the Milestone Payments.

3.4 Accounting. The Net Sales used for computing the Revenue Payments payable to Seller by Buyer will be computed in U.S. dollars. If Buyer or an Affiliate or a sublicensee sells any Cardene [****]* Product for currency other than U.S. currency, for purposes of calculating the earned Revenue Payments payable to Seller, Buyer will determine the Net Sales for the Cardene [****]* Product in such currency and then convert the Net Sales into its equivalent in U.S. currency using the average New York foreign exchange selling rate for such currency for the month in which such sale is reported, as published by The Wall Street Journal. If such rate is not so published, the conversion will be at the average selling rate for such currency for the month in which such sale is reported, as published by a leading New York, New York bank chosen by Buyer and reasonably acceptable to Seller (such acceptance not to be unreasonably withheld, delayed or conditioned).

3.5 Records; Audits. Buyer shall keep, and shall cause its Affiliates and third party sublicensees to keep, full and accurate records and books of account containing all particulars that may be necessary for the purpose of calculating Net Sales. Such records and books of account, with all necessary supporting data, shall be kept by Buyer (or its Affiliates or

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sublicensees) at its place of business or at another location under Buyer's control for the [****]* next following the end of the calendar year to which each shall pertain. Upon written request from Seller, and in no event more than (i) [****]* and (ii) [****]* of the Closing Date thereafter, Buyer shall permit an independent nationally recognized accounting firm selected by Seller and reasonably acceptable to Buyer, which acceptance shall not be unreasonably withheld, delayed or conditioned, to have access after reasonable advance notice ([****]*) and during normal business hours to such records and books of account as may be reasonably necessary to verify the accuracy of the Buyer's reports of Net Sales as provided herein. Notwithstanding the preceding sentence, Seller may make additional requests if Seller in good faith believes that there is reasonable cause to make such additional requests based on findings in prior reports. All such verifications shall be conducted at the expense of Seller. In the event any such audit concludes that adjustments should be made in Seller's favor, Seller shall provide to Buyer a complete copy of the accountant's written report reflecting such adjustments. Buyer shall have the right to dispute such adjustments in good faith by providing written notice of such dispute to Seller within thirty (30) days of the date on which the applicable written report is received by Buyer. Any dispute shall be resolved in accordance with the provisions of Section 14.4. Buyer shall pay the amounts, if any, finally determined to be due (plus accrued interest thereon, from the date originally due, at the annual rate announced by the Bank of America (or any successor) as its prime rate in effect on the date that such payment was first due [****]* promptly, and in no event later than thirty (30) days after the date Buyer receives Seller's accounting firm's written report or the dispute is resolved in accordance with Section 14.4, as the case may be. The fees charged by the accounting firm shall be paid by [****]* unless the audit (or final resolution, if applicable) reflects that adjustments in favor of [****]* for the [****]* or more of the aggregate amount paid or payable by [****]* to [****]* during the period, in which case [****]* shall pay the reasonable fees and expenses charged by such accounting firm, promptly after receipt of the invoice for such audit. Seller agrees that all information subject to review under this Section 3.5 is Confidential Information of Buyer and that it shall cause its accounting firm to retain all such information subject to the confidentiality restrictions set forth in this Agreement.

3.6 Late Payments. Any payment owed under this Agreement that is not paid on or before the date that is [****]* following the date on which such payment becomes due pursuant to this Agreement shall accrue interest, to the extent permitted by law, at the annual rate announced by Bank of America (or its successor) as its prime rate in effect on the date that such payment was first due [****]* until the date on which such payment is made.

3.7 Allocation of Purchase Price. Prior to Closing, Buyer and Seller will make reasonable efforts to agree on an allocation of the Initial Purchase Price (and any Assumed Liabilities properly included for tax purposes) among the Assets in a manner that is consistent with the principles of Section 1060 of the Internal Revenue Code of 1986, as amended (or any successor provision of any future tax law, or any comparable provision of state, local or foreign tax law). If the parties are able to agree to an allocation of the Initial Purchase Price pursuant to

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the preceding sentence, Buyer and Seller will (i) act in accordance with such allocation in the preparation and filing of all Tax returns (including the preparation and filing of IRS Form 8594), (ii) take no position inconsistent with the allocation for all Tax purposes, and (iii) allocate any post-Closing payments made pursuant to Sections 3.1 or 3.3 consistent with the methodology used in such allocation. In the event that such allocation is disputed by any

taxing authority, the party receiving notice of the dispute shall promptly notify the other party hereto and shall forward to such other party copies of all correspondence with such taxing authority in respect of such disputed allocation.

ARTICLE 4

CLOSING

4.1 Closing. The Closing of the sale, transfer, assignment, conveyance, delivery, license or sublicense of the Assets to Buyer, and the consummation of the other transactions contemplated hereby shall be held at the offices of Seller (the "Closing") as promptly as practicable, but no later than the date five (5) business days after all conditions (other than the respective delivery obligations of the parties) hereto have been satisfied or waived, or at such other time or date as may be agreed to by the parties to this Agreement (the "Closing Date"). The Closing shall have deemed to have occurred on 11:59 pm on the Closing Date.

4.2 Actions at Closing. At the Closing, sale, transfer, assignment, conveyance, delivery, license or sublicense of the Assets to Buyer will be effected by Seller pursuant to such good and sufficient instruments of conveyance, transfer and assignment as shall be necessary to transfer to Buyer good and valid title to the Assets.

(a) Deliveries by Seller at Closing. The purchase of the Assets by Buyer in accordance with the terms of this Agreement are subject to Seller's delivery to Buyer at the Closing of the following instruments, documents, agreements and certificates:

i. the General Assignment and Bill of Sale substantially in the form attached hereto as Exhibit A (the "Bill of Sale"), duly executed by Seller;

ii. a counterpart of the Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit B (the "Assignment and Assumption Agreement"), duly executed by Seller;

iii. the Patent Assignment Agreement substantially in the form attached hereto as Exhibit C (the "Patent Assignment Agreement"), duly executed by Seller;

iv. the Trademark Assignment Agreement substantially in the form attached hereto as Exhibit D (the "Trademark Assignment Agreement"), duly executed by Seller;

v. the Domain Name Assignment Agreement substantially in the form attached hereto as Exhibit E (the "Domain Name Assignment Agreement"), duly executed by Seller;

vi. a counterpart of the Transition Services Agreement, substantially in the form attached hereto as Exhibit F, duly executed by Seller;

vii. the Third Party Consents listed in Attachment 4.2(a), in substantially the form attached hereto as Exhibit G, signed by an authorized representative of each of the consenting parties to such agreements, and such Third Party Consents (a) shall not be subject to the satisfaction of any condition that has not been satisfied or waived, and (b) shall be in full force and effect;

viii. a counterpart of the Escrow Agreement, , substantially in the form attached hereto as Exhibit H, duly executed by Seller and Escrow Agent;

ix. a counterpart of the Litigation Cooperation Agreement, duly executed by Seller;

x. such other documents and agreements as may be necessary to effect the transactions contemplated by this Agreement;

xi. a certificate executed by a duly authorized officer of Seller certifying that (i) each of the representations and warranties of Seller set forth in Article 6 of this Agreement that is qualified by materiality is true and correct in all respects, (ii) each of such representations and warranties that is not so qualified is true and correct in all material respects, in each case, as of the Closing Date as though made on and as of the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date, except that any such representation or warranty made as of a specified date shall only need to have been true and correct on and as of such date, and (iii) all of the terms, covenants and conditions of this Agreement to be complied with and performed by Seller, at or prior to the Closing have been duly complied with and performed in all material respects;

xii. a certificate of the Secretary of Seller, in form and substance reasonably satisfactory to Buyer, as to the authenticity and effectiveness of the actions of the board of directors of Seller authorizing this Agreement and the transactions contemplated in this Agreement;

xiii. evidence, in form and substance reasonably satisfactory to Buyer, that Seller has fully paid all fees, costs and expenses payable pursuant to Section 8.6;

xiv. for each NDA identified and each IND identified on Attachment 2.1(e), a letter from Seller to the FDA, in form and substance reasonably satisfactory to Buyer, stating that all rights with respect to the respective application have been transferred to Buyer as of the Closing Date; and

xv. a certification as to Seller's non-foreign status in accordance with U.S. Treasury Regulations Section 1.1445-2(b)(2).

(b) Deliveries by Buyer at Closing. The sale of the Assets by Seller in accordance with the terms of this Agreement are subject to Buyer's delivery to Seller (unless

noted otherwise) at the Closing of the following instruments, agreements and certificates:

i. the Initial Purchase Price, less the Escrow Amount;

ii. evidence of payment of the Escrow Amount to the Escrow Agent;

iii. a counterpart of the Assignment and Assumption Agreement, duly executed by Buyer;

iv. a counterpart of the Transition Services Agreement, duly executed by Buyer;

v. a counterpart of the Escrow Agreement, duly executed by Buyer and Escrow Agent;

vi. a counterpart of the Litigation Cooperation Agreement, duly executed by Buyer;

vii. a certificate executed by a duly authorized officer of Buyer certifying that (i) each of the representations and warranties of Buyer set forth in Article 7 of this Agreement that is qualified by materiality is true and correct in all respects, (ii) each of such representations and warranties that is not so qualified is true and correct in all material respects, in each case, as of the Closing Date as though made on and as of the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date, except that any such representation or warranty made as of a specified date shall only need to have been true and correct on and as of such date, and (iii) all of the terms, covenants and conditions of this Agreement to be complied with and performed by Buyer, at or prior to the Closing have been duly complied with and performed in all material respects;

viii. a certificate of the Secretary of Buyer, in form and substance reasonably satisfactory to Seller, as to the authenticity and effectiveness of the actions of the board of directors (and shareholders, if applicable) of Buyer authorizing this Agreement and the transactions contemplated in this Agreement.

ARTICLE 5

EMPLOYMENT MATTERS

5.1 Employees.

(a) Notwithstanding the provisions of the Confidentiality Agreement, Buyer shall have the right prior to Closing to contact the employees of Seller currently employed in the Business, who are identified on Attachment 5.1(a) (each, a "Business Employee"), and to discuss possible terms of employment with such Business Employees and Buyer may make offers of employment, contingent on the Closing, to any of such Business Employees in its discretion. Buyer shall deliver to Seller a list of the Business Employees to whom Buyer has or intends to make offers of employment (each, an "Identified Employee") at least fifteen (15) days prior to

the date of the Closing. The Seller shall use reasonable best efforts to cooperate with Buyer to facilitate the hiring of the Identified Employees. Seller and its Affiliates shall not make competing offers of employment to the Identified Employees and shall, for a period of [****]* from the Closing Date, refrain from, directly or indirectly, employing, engaging or seeking to employ or engage any Identified Employee that has been hired by Buyer, unless such employee (i) has resigned voluntarily at least [****]* prior to such employment or engagement (without any solicitation from Seller or any of its Affiliates) or has been terminated by Buyer after the Closing Date or (ii) responds to any general media solicitation of employment or engagement by the Seller or its Affiliate. Notwithstanding the foregoing, nothing in this Agreement shall constitute a commitment of Buyer to continue the employment of any Identified Employee for any period following the Closing Date, nor limit the right of Seller or its Affiliates to change any terms or conditions of employment of any employed Identified Employee following the Closing Date.

(b) Prior to the Closing Date, or as promptly as possible thereafter, and not withstanding any otherwise applicable Employee Benefit Plan, Seller shall take such actions, to be in effect as of the Closing Date or as promptly as possible thereafter, as are necessary to cause all Identified Employees who accept offers of employment from Buyer (the "Hired Employees") to be paid, on a pro-rata basis, any earned sales incentive compensation and other comparable pay for the period of employment ending on the date of termination of employment (including, without limitation, the applicable bonuses for 2007 that would otherwise have been payable pursuant to any Seller Employee Benefit Plan, to the extent that such bonuses have not been paid prior to Closing), as well as any accrued vacation pay, sick leave, or other payroll entitlements. Seller shall waive any notice requirements or other conditions applicable to any Hired Employee in connection with such employee's termination of his or her employment with Seller.

(c) Seller shall take all action necessary to give any notification required by the Worker Adjustment and Retraining Notification Act ("WARN"), comply with any requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 and pay any and all severance, vacation, paid time off, unpaid wages, unpaid bonuses, unpaid commissions or other sums that may be due to Business Employees in connection with their termination of employment with Seller, if any, or otherwise pursuant to the terms of any of Seller's employee benefit plan. Buyer shall provide to Seller in a timely manner any information reasonably necessary to determine whether an Identified Employee has been offered employment in a comparable position and such other

information as is reasonably necessary for Seller to comply with its obligations, if any, under WARN or any similar state law, rule or regulation with respect to Seller's termination of the employment of any Business Employees.

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ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the exceptions and disclosures listed in the Disclosure Schedule (including the attachments and exhibits thereto) Seller represents and warrants to Buyer as follows:

6.1 Organization and Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority to execute and consummate this Agreement, and such other instruments, agreements and transactions as may be contemplated hereunder and thereunder. Seller has all requisite corporate power and authority and all authorizations, licenses, permits and certifications necessary to carry on the Business as now being conducted and to own, lease and operate the Assets. Seller is qualified as a foreign corporation to do business in every jurisdiction in which the nature of its business or its ownership of property requires it to be qualified and in which the failure to be so qualified would have a Material Adverse Effect. All corporate acts and other proceedings required to be taken by or on the part of Seller to authorize Seller to execute, deliver and perform this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, have been duly and properly taken, and no further action on the part of Seller or its stockholders is necessary. This Agreement has been duly executed and delivered by Seller and constitutes legal, valid and binding obligations of Seller enforceable in accordance with its terms, except as such enforceability may be subject to or limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally and (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in law or equity.

6.2 No Violation or Conflict. The execution and delivery by Seller of this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, and the consummation by Seller of the transactions contemplated hereby and thereunder will not (i) violate any law, statute, rule or regulation or judgment, order, writ, injunction or decree of any Governmental Entity applicable to Seller, or (ii) materially conflict with, result in any material breach of, or constitute a material default (or an event which with notice or lapse of time or both would become a material default) under the Certificate of Incorporation or bylaws of Seller or any agreement to which Seller is a party, (iii) materially interfere with Seller's performance of its obligations hereunder, or (iv) result in the creation or imposition of any lien or encumbrance on Seller or the Assets, and to the Knowledge of Seller, there are currently no proceedings pending before, or threatened by, any Governmental Entity that could reasonably be expected to result in the adoption, amendment or issuance of any law, statute, rule or regulation or judgment, order, writ, injunction or decree materially adverse to the Assets or the Business.

6.3 Consents and Approvals. Except as set forth in Schedule 6.3 of the Disclosure Schedule, no notice to, declaration, filing or registration with, or authorization, consent or approval of, or permit from, any Governmental Entity, or any other person or entity, is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except with respect to the HSR Filings and any declarations, filings, registrations, authorizations, consents,

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approvals or permits which if not obtained or made have not had and would not reasonably be expected to have individually or in the aggregate a Material Adverse Effect or materially interfere with Seller's performance of its obligations hereunder.

6.4 Assumed Contracts. Seller has made available to Buyer complete and correct copies of the Assumed Contracts and any amendments, modifications and supplements thereto. All the Assumed Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms by and against Seller, except as such enforceability may be subject to or limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally; and (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in law or equity; provided that there may be Assumed Contracts that have expired by their terms, but contain surviving rights or Liabilities that will be assumed by Buyer. Except as set forth in Schedule 6.4(a) of the Disclosure Schedule, neither Seller nor, to the Knowledge of Seller, any other party to such Assumed Contract is, or has received notice that it is, in violation or breach of or default under any such Assumed Contract (or with notice or lapse of time or both, would be in violation or breach of or default under any such Assumed Contract) in any material respect. Schedule 6.4(b) of the Disclosure Schedule sets forth a list of all Assumed Contracts which require the consent or waiver of any party to such Assumed Contracts, to the Assignment of such Assumed Contract as a result of the transactions contemplated hereby (the "Third Party Consents").

6.5 Title to Assets. Upon the consummation of the transactions contemplated under this Agreement, Buyer will obtain good, valid and marketable title to all the Assets, free and clear of any and all liens, encumbrances, charges, claims, pledges, or security interests of any kind (including those of secured parties). Except as set forth in Schedule 6.5 of the Disclosure Schedule, Seller beneficially owns all of the right, title or other interests to be transferred to Buyer hereunder with respect to all the Assets, and none of the Assets is leased, rented, licensed, or otherwise not owned by Seller. The transactions contemplated hereby constitute the sale and assignment of substantially all of Seller's business relating to the CV Products.

6.6 Intellectual Property.

(a) Attachment 2.1. Attachment 2.1 sets forth a complete and accurate list of all of the following throughout the world granted to, applied for, owned or licensed by Seller in relation to the CV Products: (i) Patents; (ii) Licensed IP Rights; (iii) Trademarks and Trademark Registrations; and (iv) Domain Names. Such list includes, where applicable, the record owner, jurisdiction and registration and/or application number, and date issued (or filed) for each of the foregoing. The inventorship of the Patents and patent applications within Intellectual Property other than the Licensed IP Rights (the "Owned IP Rights") is true and correct as of the Effective Date.

(b) Title. Except as otherwise stated on Attachment 2.1, Seller is the sole and exclusive owner of all Owned IP Rights and has the right to use the Licensed IP Rights as set forth in the applicable Assumed Contracts. Seller has the right to assign to Buyer the Intellectual Property required to be assigned to Buyer under this Agreement, subject to obtaining the third party consents listed in Attachment 4.2(a). The Intellectual Property was either (i) developed by employees of Seller within the scope of their employment; (ii) developed by independent

contractors who have vested all rights in and to such Intellectual Property to Seller pursuant to written agreements (such as by assignment or work-made-for-hire provisions); or (iii) obtained by Seller from a third party via a written agreement that transferred all rights in the Owned IP Rights to Seller or granted Seller a license to the Licensed IP Rights, as applicable. No current or former director, officer, or employee of Seller or its Affiliates (or, to the Knowledge of Seller, any of its predecessors in interest) will, after giving effect to the transactions contemplated herein, own or retain any rights to use, and will not have any claim with respect to any Intellectual Property. No royalties, honoraria or other fees are currently due and payable to any third parties for the use of or the right to use any (i) Owned IP Rights; or (ii) except as set forth in the Assumed Contracts, Licensed IP Rights.

(c) All Rights Transferred. After the consummation of the transactions contemplated herein, Buyer will own all rights, title, and interest in and to or have a valid written license to use all Intellectual Property and the patents included within the Licensed IP Rights, subject to obtaining the Third Party Consents, on the same terms and conditions as Seller enjoyed immediately prior to such transactions. Except for the Third Party Consents, there is no law, contract or arrangement that would prevent Seller from assigning all licenses and rights required to be assigned under this Agreement.

(d) Sufficiency of Title. Seller is the sole and exclusive owner of or has valid right to use pursuant to a written signed agreement, free and clear of all liens with respect to Owned IP Rights and, to the Knowledge of Seller, free and clear of all liens with respect to Licensed IP Rights. To the Knowledge of Seller, the Intellectual Property constitutes all of the material intellectual property assets used in or necessary for the conduct of the Business as conducted by Seller as of the Effective Date. The Owned IP Rights, and, to the Knowledge of Seller, the Licensed IP Rights, currently used in the Business, are in each case subsisting, in full force and effect, and have not been cancelled, expired, been abandoned, or otherwise terminated, and payment of all renewal and maintenance fees in respect of the Owned IP Rights, and, to the Knowledge of Seller, the Licensed IP Rights, and all filings related thereto, have been duly made. Seller has been diligent in prosecuting all applications pending as of the Effective Date related to Owned IP Rights.

(e) Non-infringement. To the Knowledge of Seller, the manufacture, sale and distribution of each CV Product as conducted as of the Effective Date does not infringe upon, misappropriate, violate or constitute the unauthorized use of (either directly or indirectly, such as through contributory infringement or inducement to infringe) any intellectual property rights of any third party in the relevant portion of the Territory for such CV Product.

(f) Pending Claims. Except as set forth in Schedule 6.6(f) of the Disclosure Schedule, there are no pending or, to the Knowledge of Seller, threatened claims, suits, arbitrations or other adversarial proceedings before any court, agency, arbitral tribunal, or registration authority in any jurisdiction in the applicable Territory challenging Seller's ownership or use of any Intellectual Property, or the validity, enforceability, or registrability of any Owned IP Rights or, to the Knowledge of Seller, any Licensed IP Rights.

(g) Third Party Infringement. Except as set forth in Schedule 6.6(g) of the Disclosure Schedule, to the Knowledge of Seller, no third party in any Territory in which Intellectual Property rights have been granted, is misappropriating, infringing, diluting or

violating any Owned IP Rights, or to the Knowledge of Seller, any Licensed IP Rights, and no claims, suits, arbitrations or other adversarial claims have been brought or, to the Knowledge of Seller, threatened against any third party by Seller.

(h) Settlements. Except as set forth in Schedule 6.6(h) of the Disclosure Schedule, there are no settlement agreements, coexistence agreements, consents, licenses, assignments, security agreements, judgments, consent decrees or judicial or administrative decisions relating to Owned IP Rights, or to the Knowledge of Seller, the Licensed IP Rights.

(i) Confidentiality. Seller has taken commercially reasonable measures to protect the confidentiality of its Trade Secrets and Confidential Information, including requiring its employees with access to such Trade Secrets and Confidential Information and other parties having access thereto to execute written non-disclosure agreements. To the Knowledge of Seller, none of the Trade Secrets or Confidential Information have been disclosed or authorized to be disclosed to any third party other than pursuant to a non-disclosure agreement. To the Knowledge of Seller, no third party to any non-disclosure agreement with Seller is in breach, violation or default thereof.

(j) Employee Cooperation. Each present or past employee, officer, consultant or any other person who participated on behalf of Seller in the development of any of the CV Products or any of the Intellectual Property has executed a valid and enforceable agreement with Seller that (i) conveys any and all right, title and interest in and to all Intellectual Property developed by such Person in connection with such Person's employment or contract to Seller, (ii) requires such Person, during and after the term of employment or contract, to cooperate with Seller in the prosecution of any patent applications filed in connection with such Intellectual Property, (iii) establishes a representation and covenant by such Person that no process, technique, innovation or other work product provided to Seller is or will be derived from or otherwise constitute the proprietary information of a prior employer or contractor, in contravention of any prior confidentiality agreement, and (iv) obligates such Person to keep any Confidential Information of Seller confidential both during and after the term of the employment or contract. To the Knowledge of Seller, no employee or consultant of Seller is in violation of any laws or regulations

relating to Intellectual Property applicable to such employee or consultant, or any term of any employment agreement, confidentiality agreement, patent or invention disclosure agreement or other contract relating to the relationship of such employee or consultant with Seller or any prior employer or client, as the case may be.

(k) Notices. As of the Effective Date, Seller has not received any notice (including, without limitation, any [****]*) pursuant to [****]* by and between Seller and [****]*, as such agreement may be amended from time to time, and to the Knowledge of Seller as of the Effective Date, there are no facts or circumstances that could reasonably be expected to result in any such notice.

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(l) Registrations; Regulatory Matters. All Registrations held by Seller with respect to the CV Products are listed on Attachment 2.1(e). The Registrations are owned exclusively by Seller. To Seller's Knowledge, all of the Registrations are valid and in full force and effect as of the Effective Date. The Registrations (i) are in the name of Seller; and (ii) except as set forth in Schedule 6.6(l) of the Disclosure Schedule, constitute all licenses, permits, approvals, qualifications, authorizations or requirements of any Governmental Entity in the applicable Territory necessary to manufacture and sell the Marketed Products in the applicable Territory. Seller has furnished Buyer with access to a complete copy of the NDA, including all amendments and supplements thereto. Each of the Registrations has been approved by the FDA or other relevant Governmental Entity, as the case may be, and each of the Registrations is in good standing with the FDA or other relevant Governmental Entity, as the case may be. There is no action or proceeding by any Governmental Entity pending or, to the Knowledge of Seller as of the Closing Date, threatened seeking the revocation or suspension of any Registration relating to the manufacture or sale of the Marketed Products in the applicable Territory.

6.7 Regulatory Status of Marketed Products. Except as set forth on Schedule 6.7 of the Disclosure Schedule, there have been no recalls, withdrawals, or market replacements of the Marketed Products in the applicable Territory in the past [****]*.

6.8 Product Net Sales. Seller's net sales of each of the Marketed Products as set forth on Schedule 6.8 of the Disclosure Schedule, for the periods specified therein, are accurate and were determined in accordance with GAAP.

6.9 Violations of Law. The utilization of the Assets and the conduct of the Business by Seller and its Affiliates and their respective agents and employees do not violate any applicable law, governmental specification, authorization or requirement or any decree, judgment, order or similar restriction binding on the Seller or any of its Affiliates in any material respect. Seller has not received notice of any Governmental Entity investigation, claim or proceeding concerning compliance matters relating to the CV Products or the Business, or the business practices of Seller or any of its Affiliates or any of their respective agents or employees, including without limitation business practices related to the pricing, promotion and manufacturing of the Marketed Products.

6.10 Litigation. Neither the Assets nor the Business is the subject of any outstanding judgment, order, writ, injunction or decree of any court, arbitrator or administrative or Governmental Entity limiting, restricting or affecting the Assets or the Business in any material aspect. Except as set forth on Schedule 6.10 of the Disclosure Schedule, there are no claims, suits, proceedings pending or, to the Knowledge of Seller, threatened in writing against Seller or any of its Affiliates or any of their respective agents or employees with respect to the Assets, Business or transactions contemplated in this Agreement.

6.11 Employees. Except as set forth in Schedule 6.11 of the Disclosure Schedule, the Business Employees listed in Attachment 5.1(a) are all the employees of Seller whose efforts and responsibilities are material to the Business. As of the Effective Date, to the Knowledge of Seller, no Business Employee and no group of Business Employees has any plans to terminate his or her employment with Seller. To the Knowledge of Seller, Seller and its Affiliates have complied with all laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining and the payment of social security and

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other taxes. Seller and its Affiliates have no material labor relations problem pending relating to the Business Employees and their labor relations relating to the Business Employees are satisfactory. There are no workers' compensation claims pending against Seller or its Affiliates relating to a Business Employee nor is Seller or its Affiliates aware of any facts that would give rise to such a claim. To the Knowledge of Seller, no Business Employee is subject to any secrecy or non-competition agreement or any other agreement or restriction of any kind that would impede in any way the ability of such employee to carry out fully all activities of such employee in furtherance of the Business. With respect to each Employee Benefit Plan (i) Seller and its Affiliates have complied and are now in compliance with all laws and regulations applicable to such Employee Benefit Plans and (ii) each Employee Benefit Plan has been administered in all material respects in accordance with its terms. Attachment 5.1(a) lists, as of the date set forth on such attachment, each Business Employee and the position, title, remuneration (including any scheduled salary or remuneration increases), date of employment and accrued vacation pay of each such Business Employee.

6.12 Taxes. As of the Effective Date, there are no, and, at the Closing, there will not be, any liens for Taxes accrued upon the Assets. Any and all Taxes related to the Assets or the Business, to the extent payable prior to the Closing, have been or will be paid by Seller prior to the Closing. No jurisdiction (whether within or without the United States) in which the Seller or any Affiliate of Seller has not filed a specific Tax Return with respect to the

Assets or the Business has asserted that the Seller or such Affiliate is required to file such Tax Return in such jurisdiction. Seller and each Affiliate of Seller has complied (and until the Closing Date will comply) with all applicable laws, rules, and regulations relating to the payment and withholding of Taxes relating to the Assets or the Business (including withholding and reporting requirements under Code §§3401 through 3406, 6041 and 6049 and similar provisions under any other laws) and has, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all required amounts.

6.13 Customers and Suppliers. Schedule 6.13 of the Disclosure Schedule lists the [****]* largest customers and suppliers of Seller relating to each of the Marketed Products for the fiscal years ended December 31, 2006 and December 31, 2007 and sets forth opposite the name of each such customer or supplier the approximate percentage of gross sales attributable from such customers or cash payments attributable to such suppliers, and unit sales for each such customer, for each such period. Since December 31, 2006, no customer or supplier listed on Schedule 6.13 of the Disclosure Schedule has advised in writing that it will stop or materially decrease the rate of business done with Seller except for changes in the ordinary course of Seller's business.

6.14 Inventory; Raw Materials and WIP. The Product Inventory, Raw Materials and WIP relating to the Marketed Products consist of items of a quality and quantity usable and, with respect to finished goods only, salable at Seller's normal profit levels, in each case, in the ordinary course of the business. Seller's inventory of finished goods generated by the Business is not slow-moving as determined in accordance with past practices, obsolete or damaged and is

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merchantable and fit for its particular use. Seller has on hand or has ordered and expects timely delivery of such quantities of Raw Materials and has on hand such quantities of WIP and Product Inventory as are reasonably required to timely fill current orders on hand with respect to the Marketed Products which require delivery within [****]* and to maintain the manufacture and shipment of products at its normal level of operations. Schedule 6.14(a) of the Disclosure Schedule contains a materially complete and accurate summary of the Product Inventory, Raw Materials and WIP relating to each of the Marketed Products as of December 31, 2007. Since January 1, 2007, sales of the Marketed Products by Seller to its distributors, licensees and wholesalers were made consistent with past practices and were not the result of any special or extraordinary sales efforts or promotions by Seller or such distributors, licensees and wholesalers. The level of inventory of the Marketed Products held by Seller's distributors, licensees and wholesalers is consistent with practice in effect during calendar year 2007 and, on the Closing Date, will not exceed a level that would be reasonably expected to be sold in the ordinary course of business, consistent with past practice, during calendar year 2007, within [****]*thereof. Seller has no reason to believe that such inventory will be subject to returns, discounts or charge-backs that, in the aggregate, are materially worse than those experienced during calendar year 2007. Schedule 6.14(b) of the Disclosure Schedule lists all of the Packaging Inventory owned by Seller as of the Effective Date.

6.15 Clinical Trials.

(a) Schedule 6.15(a) of the Disclosure Schedule is an accurate and complete list of all Clinical Trials initiated by Seller prior to the Effective Date. To Seller's Knowledge, the Clinical Trials were conducted in material compliance with Good Clinical Practice, the reporting of adverse events, the filing of reports and security promulgated by the FDA and similar regulations promulgated by other Governmental Entities as applicable to such trials. For the purposes of this Section 6.15, "Good Clinical Practice" means current good clinical practice pursuant to the FD&C Act and the relevant U.S. regulations in Title 21 of the U.S. Code of Federal Regulations (including Parts 11, 50, 54, 56, 312, 314 and 601).

(b) Other than as disclosed on Schedule 6.15(b) of the Disclosure Schedule, during the Clinical Trials, there have been no deaths or serious adverse events.

(c) Seller has not received any written notices or other written correspondence from the FDA or any other Governmental Entity requiring the termination or suspension of any Clinical Trials.

6.16 Absence of Change. Except as disclosed in Schedule 6.16 of the Disclosure Schedule, except for the execution and delivery of this Agreement and the transactions to take place pursuant hereto on or prior to the Closing Date, since September 30, 2007 there has not been any Material Adverse Change, or any event or development which, individually or together with other such events, could reasonably be expected to result in a Material Adverse Change. Without limiting the foregoing, except as disclosed in Schedule 6.16 of the Disclosure Schedule, there has not occurred, between September 30, 2007 and the date hereof, any physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the

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assets of Seller or its Affiliates used or held for use in the conduct of the Business in an aggregate amount [****]*.

6.17 No Undisclosed Liabilities. There are no Liabilities against, relating to or affecting the Business or any of the Assets, other than Liabilities (i) incurred in the ordinary course of business consistent with past practice, (ii) under the Assumed Contracts, or (iii) which, individually or in the aggregate, are not material to the condition of the Business.

6.18 Sufficiency. The Assets and Buyer's rights under this Agreement constitute all of the material assets that are necessary for Buyer to operate the Business as of and after the Closing Date in substantially the same manner as the Business was operated by Seller (and Seller's Affiliates) on the Effective Date.

6.19 Brokers and Finders. Except as set forth in Schedule 6.19 of the Disclosure Schedule, Seller has not employed any broker or finder or incurred any Liability for any brokerage fee, commission or finder's fee in connection with the transactions contemplated by this Agreement.

6.20 No Implied Warranty. THE REPRESENTATIONS AND WARRANTIES GIVEN HEREIN BY SELLER ARE IN LIEU OF ANY IMPLIED WARRANTIES WHICH MAY OTHERWISE BE APPLICABLE BECAUSE OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER STATUTE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller makes no representation or warranty with respect to (i) any forecasts, projections, estimates or budgets delivered or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or (ii) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the Business, except as expressly set forth in this Agreement or the exhibits hereto; provided, that Seller does represent and warrant that it has neither intentionally provided or made available to Buyer any untrue information, nor intentionally omitted any material fact or information regarding the Assets, the Product or the Business or any of the other matters dealt with in this Article 6 relating to Seller or the transactions contemplated by this Agreement.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES OF BUYER

7.1 Organization and Authority. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has full corporate power and authority to execute and deliver this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, and to perform its obligations hereunder and thereunder. All corporate acts and other proceedings required to be taken by or on

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the part of Buyer to authorize Buyer to execute, deliver and perform this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, have been duly and properly taken, and no further action on the part of Buyer or its stockholders is necessary. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be subject to or limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally and (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in law or equity, regardless of whether considered in a proceeding in law or equity.

7.2 No Conflict or Violation. The execution and delivery by Buyer of this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder and the consummation by Buyer of the transactions contemplated hereby and thereunder will not (i) violate any law, statute, rule or regulation or judgment, order, writ, injunction or decree of any Governmental Entity applicable to Buyer, or (ii) materially conflict with, result in any material breach of, or constitute a material default (or an event which with notice or lapse of time or both would become a material default) under the Certificate of Incorporation or bylaws of Buyer or any agreement to which Buyer is a party, or (iii) materially interfere with Buyer's performance of its obligations hereunder.

7.3 Consents and Approvals. Except as set forth in Schedule 7.3, no notice to, declaration, filing or registration with, or authorization, consent or approval of, or permit from, any Governmental Entity, or any other person or entity, is required to be made or obtained by Buyer in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, except with respect to the HSR Filings and except for declarations, filings, registrations, authorizations, consents, approvals or permits which if not obtained or made have not had and would not reasonably be expected to have individually or in the aggregate a material adverse effect on Buyer or materially interfere with Buyer's performance of its obligations hereunder.

7.4 Cash Resources. Buyer has, prior to the execution of this Agreement, delivered to Seller, true and complete copies of written commitments of third parties to provide Buyer with the financing (in the form of both equity and debt) required for Buyer's acquisition of the Business hereunder. Subject to the funding of the funds set forth in the written commitments, in each case, in accordance with and subject to their terms and conditions, Buyer will have at Closing cash in an amount sufficient to pay the Purchase Price at the Closing and any and all fees and expenses relating to the transactions contemplated under this Agreement and specifically acknowledges Seller has entered into this Agreement in reliance upon this representation.

7.5 Litigation. There are no actions, suits, proceedings or claims pending or, to the Knowledge of Buyer, threatened in writing concerning Buyer or any of its Affiliates with respect to the transactions contemplated in this Agreement.

7.6 Brokers and Finders. Except as set forth in Schedule 7.6, Buyer has not employed any broker or finder or incurred any Liability for any brokerage fee, commission or finder's fee in connection with the transactions contemplated by this Agreement.

7.7 Buyer Due Diligence. Buyer is experienced, and/or has engaged expert advisors experienced in the evaluation and purchase of property and assets such as the Assets contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to permit it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

ARTICLE 8

PRE-CLOSING COVENANTS

8.1 Governmental Filings. Buyer and Seller shall cooperate in promptly undertaking all filings required to be filed with any Governmental Entity in connection with the transfer of Assets and other rights under this Agreement and to cooperate with one another as reasonably necessary to accomplish the foregoing, including, but not limited to, the filings required of both parties pursuant to the HSR (such filings sometimes being referred to in this Agreement as the "HSR Filings"), and the filing of any additional information as required with respect to such HSR Filings as soon as practicable after receipt of request therefor from the United States Federal Trade Commission. All filing fees related to the HSR Filings shall be [****]*.

8.2 Conduct of Business. During the period on and from the Effective Date through and including the Closing Date, Seller will conduct the Business only in the ordinary course consistent with past practices, unless Buyer shall otherwise agree in writing. Without limiting the generality of the foregoing,

(a) Seller will:

i. use commercially reasonable efforts to (i) keep available (subject to dismissals and retirements in the ordinary course of business consistent with past practice) the services of the Business Employees, (ii) maintain the good will of wholesalers, customers, suppliers, lenders and other persons and entities to whom Seller sells goods or provides services or with whom Seller otherwise has significant business relationships in connection with the Business, and (iii) continue all current sales, marketing and promotional activities relating to the Business;

ii. except to the extent required by applicable law, (i) cause the Books and Records to be maintained in the usual, regular and ordinary manner, and (ii) not permit any material change in any pricing, investment, accounting, financial reporting, inventory, credit, allowance or Tax practice or policy of Seller or its Affiliates that would adversely affect the Business, the Assets or the Assumed Liabilities;

iii. comply, in all material respects, with all laws and orders applicable to the Business and promptly following receipt thereof give Buyer copies of any

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notice received from any Governmental Entity or any other person or entity alleging any violation of any such law or order;

iv. work diligently and in good faith to complete, as promptly as reasonably practicable, the application to be submitted to the FDA to obtain the Initial FDA Approval, such application to be in form and substance reasonably satisfactory to Buyer; provided, if Seller completes such application prior to the Closing Date and the application is in form and substance reasonably satisfactory to Buyer, then Seller will promptly file such application with the FDA;

v. work diligently and in good faith to [****]* and any and all work and agreements relating thereto and [****]* related thereto; and

vi. promptly provide to Buyer written notice of (i) any formal action taken, or non-privileged communication made, by Seller or any other party to the Sun Litigation in connection therewith, and (ii) Seller's filing of any citizen's petition or issuance of any other response in connection with the [****]* and, in the case of this subclause (ii), shall not make any such filing or issue any such response without the prior written consent of Buyer.

(b) Seller will refrain from:

i. entering into, amending, modifying, terminating (partially or completely), granting any waiver under or giving any consent with respect to any Assumed Contract or any Registration;

ii. violating, breaching or defaulting under, in any material respect, or taking or failing to take any action that (with or without notice or lapse of time or both) would constitute a material violation or breach of, or default under, any term or provision of any Assumed Contract or any Registration;

iii. waiving any right of Seller under any Liability of or owing to Seller in connection with the Business, other than in the ordinary course of business consistent with past practice;

iv. engaging in any transaction with respect to the Business with any officer, director or Affiliate of Seller, either outside the ordinary course of business consistent with past practice or other than on an arm's-length basis; and

v. entering into any agreement to do or engage in any of the foregoing.

8.3 No Solicitation. Seller will not (and it will use its best efforts to assure that its officers, directors, employees, agents and affiliates do not on its behalf) (a) take any action to solicit, initiate, seek, or affirmatively support any inquiry, proposal or offer from, any

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corporation, partnership, person or other entity or group (other than Buyer) relating to any acquisition of the Business or any of the Assets, other than the marketing, sale and distribution of Product Inventory and use of Raw Materials in the ordinary course consistent with past practices (any such proposed transaction being a "Third Party Acquisition"); or (b) participate in any discussions or negotiations with, or provide any non-public information to, any corporation, partnership, person or other entity or group (other than Buyer) relating to any proposed Third Party Acquisition. Seller shall immediately terminate any such negotiations in progress as of the Effective Date. In no event will Seller accept or enter into an agreement concerning any such Third Party Acquisition prior to the termination of the Agreement pursuant to Article 12. Notwithstanding this provision, nothing herein shall be deemed to in any way restrict or limit the right of Seller to engage in discussions, negotiations, furnishing of information or any other activities relating to or in support of transactions involving the acquisition or sale of Seller and/or any other product lines or businesses of Seller other than the Business or the Assets, so long as this Agreement shall remain in full force and effect and shall remain binding on the parties hereto.

8.4 Access. During the period from the Effective Date and continuing until the Closing, upon reasonable advance notice received from Buyer and at Buyer's expense, Seller shall (i) afford Buyer, its financing sources and their representatives reasonable access to, during regular business hours, or furnish Buyer, its financing sources and its representatives with copies of, documents used solely and specifically with respect to the Assets or the CV Products as Buyer may reasonably request, and (ii) otherwise cooperate and assist with Buyer's and its financing source's investigation of the Assets and the CV Products as Buyer may reasonably request.

8.5 [****]*

8.6 Payment of Certain Expenses. Seller shall, on or prior to the Closing Date, pay in full any and all fees, cost and expenses incurred or accrued with respect to the Sun Litigation (including attorneys' fees) through the Closing and shall provide Buyer with evidence reasonably satisfactory to Buyer that all such amounts have been paid.

8.7 Transition Services Agreement. Seller and Buyer shall enter into the Transition Services Agreement on the Closing Date, in substantially the same form and on substantially the same terms as set forth in Exhibit F, pursuant to which Seller will provide to Buyer the transition services requested by it, which services may include, without limitation, regulatory, supply chain management, intellectual property and other services.

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ARTICLE 9

CONDITIONS TO CLOSING

9.1 Conditions to Obligations of Buyer. All obligations of Buyer hereunder are, at the option of Buyer, subject to the conditions precedent that (all or any of which may be waived by Buyer, in whole or in part), at the Closing:

(a) All consents, approvals and actions of, filings with and notices to any Governmental Entity necessary to permit Buyer and Seller to perform their obligations under this Agreement and to consummate the transactions contemplated hereby (a) shall have been duly obtained, made or given, (b) shall be in form and substance reasonably satisfactory to Buyer, (c) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (d) shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Entity necessary for the consummation of the transactions contemplated by this Agreement, including under the HSR, shall have occurred.

(b) There shall not be in effect on the Closing Date any order or law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or which could reasonably be expected to otherwise result in a Material Adverse Effect and there shall not be pending or threatened on the Closing Date any action or proceeding in, before or by any Governmental Entity which could reasonably be expected to result in the issuance of any such order or the enactment, promulgation or deemed applicability to Buyer or the transactions contemplated by this Agreement of any such law.

(c) Seller shall have furnished to Buyer all deliverables set forth in Section 4.2(a), and shall have performed and complied with, in all material respects, each agreement, covenant and obligation required by this Agreement to be so performed or complied with by Seller at or before Closing.

(d) Each of the representations and warranties of Seller set forth in this Agreement that is qualified by materiality shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the Closing Date as though made on and as of the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

(e) The level of inventory of the Marketed Products held by Seller's distributors, licensees and wholesalers on the Closing Date shall not exceed a level that would be reasonably expected to be sold in the ordinary course of business, consistent with past practice during the calendar year 2007, [****]*.

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(f) If Buyer shall have complied in all respects with its obligations under Section 8.5(a), and Buyer shall have taken all material action that is within its reasonable control and required by it pursuant to the terms of the written commitments of third parties referred to in Section 7.4 and the definitive agreements entered into in connection therewith, then it shall be a condition to Buyer's obligations under this Agreement that it shall have obtained financing on terms substantially similar to those set forth in the commitment letters referred to in Section 7.4 and in an amount sufficient to pay the Initial Purchase Price at Closing.

9.2 Conditions to Obligations of Seller. All obligations of Seller hereunder are, at the option of Seller, subject to the conditions precedent that (all or any of which may be waived by Seller, in whole or in part), at the Closing:

(a) All consents, approvals and actions of, filings with and notices to any Governmental Entity necessary to permit Buyer and Seller to perform their obligations under this Agreement and to consummate the transactions contemplated hereby (a) shall have been duly obtained, made or given, (b) shall be in form and substance reasonably satisfactory to Seller, (c) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (d) shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Entity necessary for the consummation of the transactions contemplated by this Agreement, including under the HSR, shall have occurred.

(b) There shall not be in effect on the Closing Date any order or law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement and there shall not be pending or threatened on the Closing Date any action or proceeding in, before or by any Governmental Entity which could reasonably be expected to result in the issuance of any such order or the enactment, promulgation or deemed applicability to Seller or the transactions contemplated by this Agreement of any such law.

(c) Buyer shall have furnished to Seller all deliverables set forth in subsections (i)-(iv), (vi), (viii) and (ix) of Section 4.2(b), and shall have performed and complied with, in all material respects, each agreement, covenant and obligation required by this Agreement to be so performed or complied with by Buyer at or before Closing.

(d) Each of the representations and warranties of Buyer set forth in this Agreement that is qualified by materiality shall be true and correct in all respects, and each of such representations and warranties that is not so qualified shall be true and correct in all material respects, in each case, as of the Closing Date as though made on and as of the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

ARTICLE 10

POST-CLOSING COVENANTS

10.1 Further Assurances.

(a) At any time or from time to time after Closing, at Buyer's reasonable request and without further consideration, Seller shall execute and deliver to Buyer such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Buyer may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to Buyer, and to confirm Buyer's title to, all of the Assets, and, to the full extent permitted by law, to put Buyer in actual possession and operating control of the Business and the Assets and to assist Buyer in exercising all rights with respect thereto, and otherwise to cause Seller to fulfill its obligations under this Agreement. Without limiting the foregoing, (i) if, on or prior to the [****]* of the Closing Date, either Buyer or Seller becomes aware that an asset or property of Seller or its Affiliates that was used solely or primarily in, or that was necessary for the conduct of, the Business on the Effective Date, was not sold, transferred, assigned, conveyed and delivered to Buyer on the Closing Date, then (A) if such asset or property was used solely in the Business on the Effective Date, Seller shall promptly sell, transfer, assign, convey and deliver such asset or property to Buyer, or (B) if such asset or property was used primarily in, or was otherwise necessary for the conduct of, the Business on the Effective Date, Seller shall either promptly sell, transfer, assign, convey and deliver such asset or property to Buyer, or make such asset or property available to Seller under a perpetual, paid-up, irrevocable, royalty-free, non-exclusive license, with the right to sublicense, in each case without any additional consideration being due to Seller, and (ii) in the event that any Affiliate of Seller has any right, title or interest in any Asset (or any other asset used in the Business that would otherwise be an Asset if owned by Seller), then Seller shall cause such Affiliate to transfer and assign all such right, title and interest to Buyer.

(b) Effective on the Closing Date, Seller hereby constitutes and appoints Buyer the true and lawful attorney of Seller, with full power of substitution, in the name of Seller or Buyer, but on behalf of and for the benefit of Buyer: (i) to demand and receive from time to time any and all Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (ii) to institute, prosecute, compromise and settle any and all actions or proceedings that Buyer may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Assets; (iii) to defend or compromise any or all actions or proceedings in respect of any of the Assets; and (iv) to do all such acts and things in relation to the matters

set forth in the preceding clauses (i) through (iii) as Buyer shall deem desirable. Seller hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Seller shall deliver to Buyer at Closing an acknowledged power of attorney to the foregoing effect executed by Seller. Buyer shall indemnify and hold harmless Seller from any and all Losses caused by or arising out of any breach of law by Buyer in its exercise of such power of attorney.

(c) Seller agrees to cooperate with Buyer in enforcing any rights Seller may have, contractual or otherwise, which Seller may retain after the Closing Date and which may relate to the Assets and/or the Business; provided, however, such enforcement must include a claim for damages attributable to post-Closing periods. Seller agrees to appoint Buyer as its

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agent, with full authority to enforce such rights, and agrees to join in any litigation to the extent deemed necessary by Buyer to protect Buyer's interest in the Assets and/or the Business. Buyer shall have the right to sue for and recover past, present and future damages resulting from Seller's retained rights; provided, however, such suit must include a claim for damages attributable to post-Closing periods. To the extent such damages can be attributed to damages occurring before the Closing Date, Buyer shall, to the extent recovered by Buyer, pay to Seller the portion of any total recovery minus costs of litigation attributable to such damages. Seller shall make available to Buyer any of its employees, officers, and directors as requested by Buyer during the course of litigation. Seller shall promptly cooperate with Buyer at Buyer's request in gathering information and in responding to any discovery or other obligation of Buyer in preparation for or during the conduct of litigation. Subject to the allocation of costs of litigation stated above, Buyer shall, with respect to the services provided by Seller on Buyer's request under this Section 10.1(c), pay Seller's expenses and indemnify Seller consistent with the provisions of Section 4 and Section 5 of the Litigation Cooperation Agreement. Seller shall promptly deliver copies of all proprietary, inventions, confidentiality and similar agreements between Seller and any Business Employee, as well as such other agreements that Buyer may reasonably request from time to time for purposes of exercising its rights under this Section 10.1(c), including, without limitation, agreements with past or present employees, agents or representatives.

10.2 Transfer of Registrations; Interim Responsibility.

(a) Promptly after the Closing Date, Seller shall (i) send letters to the FDA and other Governmental Entities indicating that the Registrations are transferred to Buyer and that Buyer is the new owner of the Registrations as of the Closing Date and (ii) provide to Buyer a copy of said letters.

(b) Promptly after the Closing Date, the parties will cooperate in transferring the Registrations to Buyer. The target date for the transfer shall be agreed upon by the parties, but shall not be later than [****]* from the Closing Date. Prior to the Closing, the parties will agree upon procedures to ensure a smooth transition from Seller to Buyer of all of the activities required to be undertaken by the Registration(s) holder, including adverse experience reporting, quarterly and annual reports to FDA, handling and tracking of complaints, sample tracking, and communication with health care professionals and customers which shall be specified in the Transition Services Agreement or an amendment thereto. Within [****]* after the Closing Date, Seller will forward to Buyer a complete copy of the Registrations for the CV Products, as well as copies of all correspondence with, and periodic and other reports (including adverse event reports and the underlying data) to, regulatory authorities in the applicable Territory. Seller will cooperate with Buyer to ensure a smooth transition of the activities contemplated hereby, and in obtaining the cooperation of Seller and its distributors and licensees of the CV Products with the transfer of adverse experience reporting obligations from Seller to Buyer.

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(c) Until the Registrations have been transferred to Buyer, Seller shall be responsible for maintaining them, at Seller's sole cost and expense. After such transfer, Buyer will assume all responsibility for the Registrations, at Buyer's sole cost and expense. Each party shall cooperate with the other in making and maintaining all regulatory filings that may be necessary in connection with the execution, delivery and performance of this Agreement.

10.3 Communication With Agencies. Until the Registrations are transferred to Buyer, Seller shall have responsibility for all communications with the FDA relating to the CV Products, and Seller will promptly provide Buyer with copies of all communications from the FDA with respect to the CV Products and/or the manufacture thereof, and Seller shall consult with Buyer and reflect the Buyer's reasonable requests regarding all communications to the FDA with respect to the CV Products and/or the manufacture thereof, prior to making such communication with the FDA. After such transfer has been completed, Buyer shall have responsibility for all such communication it sends to or receives from any Governmental Entity in the applicable Territory concerning the CV Products.

10.4 Adverse Experience Reporting.

(a) Until the Registrations are transferred to Buyer, Seller shall be responsible for the adverse experience and safety reporting for the CV Products in compliance with the requirements of the FD&C Act and the regulations promulgated thereunder. After the Registrations are transferred to Buyer, Buyer shall assume such responsibility. Buyer and Seller agree to meet promptly after the Closing Date to determine mutually agreeable reporting procedures to communicate the information as required under this Section 10.4.

(b) On or before the Closing Date, Seller shall provide Buyer with a summary of the information relating to the investigation and reporting of adverse experiences regarding the CV Products and all appropriate information that is relevant to the safe use of the CV Products as of the Closing Date.

(c) After the Closing Date and until the Registrations are transferred to Buyer, Buyer agrees to promptly submit to Seller all adverse drug experience information and customer complaints brought to the attention of Buyer with respect to the CV Products, as well as any material events and matters concerning or affecting the safety or efficacy of the CV Products. Such information or customer complaints shall be forwarded to Seller to the attention of:

Name:	[****]*
Title:	Medical Director, Drug Safety
Address:	1400 Seaport Blvd
	Redwood City, CA 94063
Facsimile:	650-454-1403
Drug safety mailbox:	drugsafety@pdl.com

(d) After the Registrations have been transferred to Buyer, Seller shall assist Buyer with the provision of data relating to adverse experiences for the CV Products after such transfer to Buyer. Additionally, after the transfer of the Registrations to Buyer, Seller shall provide Buyer with all adverse drug experience information and customer complaints brought to the attention of Seller with respect to the CV Products, as well as any material events and matters concerning or affecting the safety or efficacy of the CV Products, via facsimile to the attention of:

Name:	[****]*
Title:	Director of Regulatory Affairs
Address:	7 East Frederick Place
	Cedar Knolls, NJ 07927
E-mail:	[****]*

10.5 Medical Inquiries. Promptly after the Registrations have been transferred to Buyer, Buyer shall assume all responsibility for all correspondence and communication with physicians and other health care professionals and customers in the applicable Territory relating to the CV Products. After the Closing Date, Buyer and Seller shall work together towards an orderly transition of the responsibility for all correspondence and communication with health care professionals and customers in the applicable Territory relating to the CV Products. Seller shall continue to be responsible for such correspondence and communication under the direction of Buyer until the Registrations have been transferred to Buyer. Buyer shall keep such records and make such reports as shall be reasonably necessary to document such communications in compliance with all applicable regulatory requirements. After transfer of responsibility to Buyer pursuant to this Article 10, Seller shall, except in the case of medical emergency, refer all questions relating to the CV Products raised by health care professionals and customers to Buyer for its response.

10.6 Non-Use of Trademarks. Buyer covenants that, except as expressly permitted in this Agreement, Buyer shall not use in any manner any trademark of Seller (other than the Trademarks listed in Attachment 2.1(c) and transferred to Buyer pursuant to this Agreement).

10.7 Documents. Seller will permit Buyer, its financing sources and their duly authorized representatives access during normal business hours (upon written notice to Seller) to contracts and other data relating to the Business, the Assets conveyed and assumed at the Closing to the extent copies of such items were not delivered to Buyer. Buyer will permit Seller and its

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duly authorized representatives access during normal business hours (upon written notice to Buyer) to all contracts and other data relating to the Assets conveyed and assumed at the Closing to the extent originals of such items were delivered to Buyer. Such access by Buyer, Seller or such other person, as the case may be, shall be allowed until the later to occur of the expiration of the statute of limitations for the imposition of Tax with respect to the years to which such data pertain, or seven years from the year to which such data pertain, provided that such access shall not unduly interfere with the business and affairs of the party or applicable Affiliate permitting such access. Buyer will cooperate with Seller, and Seller will cooperate with Buyer, with respect to any Tax examinations, audits, contests or other Tax proceedings, relating to the Business. The party requesting assistance hereunder shall reimburse the other party for reasonable expenses incurred in providing such assistance.

10.8 Governmental Inspections. For a period of [****]* following the Closing Date each party shall advise the other party of any governmental visits to, or written or oral inquiries about, any facilities (to the extent such visit relates to, or the results thereof could affect the manufacture or supply of, the CV Products) or procedures for the manufacture, storage or handling of the CV Products, or the marketing, selling, promotion or distribution of any of the CV Products, promptly after any such visit or inquiry (or in advance, for any scheduled visits). During this period, each party shall promptly furnish to the other party any report or correspondence issued by or provided to a Governmental Entity in connection with such visit or inquiry, purged only of Confidential Information of such party wholly unrelated to the other party's activities under this Agreement and any information that is unrelated to the CV Products. Each party shall permit the relevant Governmental Entity to inspect its facilities in connection with the activities contemplated by this Agreement.

10.9 Intellectual Property Maintenance. Following the Closing, Buyer will have the sole right (but not the obligation) to file, prosecute and maintain, at its sole cost and expense any patent applications, Patents, Trademark Registrations and Domain Names that cover or relate to the CV Products. Following the Closing, Buyer shall be responsible for recording the assignment of the assigned Patents, Domain Names and Trademark Registrations with the U.S. Patent and Trademark Office and other authorities or entities as it deems appropriate, at its own cost and expense (including any attorney fees and filing fees). Seller shall fully cooperate with Buyer, as and to the extent reasonably requested by Buyer after the Closing Date, at Buyer's sole cost and expense, to secure any further registration of, or to enforce or defend, any Patents, Trademarks, Registrations, Domain Names or other intellectual property rights related to the CV Products for the benefit of Buyer and to execute assignments and any other documents to effect the transfer of such Patents, Trademarks, Registrations, Domain Names or other intellectual property rights related to the CV Products to Buyer.

10.10 Insurance. As of the Closing Date, the coverage under all insurance policies related to the Assets and the Business shall continue in force only for the benefit of Seller, and not for the benefit of Buyer, the Assets or the Business. As of the Closing Date, Buyer agrees to

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arrange for its own insurance policies with respect to the Assets and Buyer's conduct of the Business.

10.11 Federal Supply Schedule. Buyer shall within five (5) business days after the Closing Date, add the Marketed Products to its Federal Supply Schedule.

10.12 Promotion, Marketing and Labeling. Promptly after the Registrations have been transferred to Buyer and subject to applicable regulatory approvals, all Buyer advertising and promotional materials for the Marketed Products shall identify Buyer as the marketer of the Marketed Products in the applicable Territory, in such form as Buyer shall determine. Promptly after the Registrations have been transferred to Buyer, Buyer shall make such changes in the package insert, Marketed Products labeling and packaging as may be required to reflect Buyer as the marketer of the Marketed Products in the applicable Territory, including making all required FDA and any other regulatory filings in connection therewith. Promptly after the Registrations have been transferred to Buyer, Seller shall file with the FDA a notice that Buyer is the marketer and distributor of the Marketed Products in the applicable Territory. To the extent that the FDA requests additional information or meetings regarding Buyer's responsibilities as marketer and distributor of the Marketed Products in the applicable Territory, Buyer shall respond to the FDA at its own expense and through its own personnel. Seller is not required to change the Marketed Products' labeling or package insert, or packaging for the Drug Products or the Packaged Products. With respect to the Product Inventory purchased by Buyer hereunder, Buyer shall be permitted (i) until [****]* in the case of the [****]* other than [****]*, (ii) until [****]* in the case of [****]*, and (iii) until [****]* in the case of the [****]* to sell Marketed Products from the Product Inventory as labeled and packaged prior to the Closing Date, without regard to whether such Marketed Products references Seller or includes any intellectual property rights Seller has in Trademarks that may be included on the labels and packaging but not conveyed to Buyer pursuant to this Agreement, provided that all such Product Inventory shall be held, maintained, distributed and sold in accordance with the Registrations and all applicable laws. Without the prior written approval from Seller, which approval shall not be unreasonably withheld or delayed, Buyer shall not use or distribute any marketing, promotional or advertising copy related to the [****]* has been transferred to Buyer; provided, however, that nothing herein shall require any approval from Seller for Buyer to issue invoices for, and collect revenues from, sales of the [****]* from and after the Closing Date.

10.13 Payments from Third Parties. As soon as reasonably practicable after the Closing Date but not more than [****]* thereafter, Seller will provide Buyer with a list of all of the customers and wholesalers purchasing the Marketed Products from Seller, and Seller and Buyer shall notify those customers and wholesalers that Buyer has acquired all of Seller's right, title and interest in and to the marketing and sale of the Marketed Products in the applicable Territory and all payments with respect to the sale of the Marketed Products after the Closing Date should be paid directly to Buyer at its designated account. Seller and Buyer shall notify customers and wholesalers using the third party notification letter substantially in the form attached hereto as Exhibit J. In the event that, on or after the Closing Date, either party shall receive any payments

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or other funds due to the other party, then the party receiving such funds shall promptly forward such funds to the proper party. The parties acknowledge and agree there is no right of offset regarding such payments and a party may not withhold funds received from third parties for the account of the other party in the event there is a dispute regarding any other issue under this Agreement. Buyer and Seller shall each keep, and shall cause its respective Affiliates and third party sublicensees to keep, full and accurate records and books of account containing all particulars that may be necessary for the purpose of determining any amounts that may be payable to the other party hereunder, and shall afford each other with access to books and records and with audit and other rights consistent with the rights set forth in Section 3.5 of this Agreement.

10.14 Product Returns, Chargebacks and Rebates. Except as otherwise provided in the Transition Services Agreement, Buyer shall assume responsibility for handling all returns of the CV Products sold by or for Seller prior to the Closing Date in accordance with Seller's normal return policies and procedures. Any returns received directly by Seller after the Closing Date shall be forwarded to Buyer's designated facility for handling of the returned CV Products and processing of customer credits. Notwithstanding the foregoing, [****]* shall be responsible for [****]* and [****]* shall be financially responsible for all such chargebacks and rebates related to the CV Products sold after the Closing Date.

10.15 Bulk Transfer Laws. Buyer hereby waives compliance by Seller with the provisions of any so-called "bulk transfer law" of any jurisdiction in connection with the sale of the Assets to Buyer. Seller shall indemnify and hold Buyer harmless from, against and in respect of (and shall reimburse Buyer for) any and all liabilities that may be asserted by third parties against Buyer as a result of noncompliance with any such bulk transfer law.

10.16 Non-Competition.

(a) Except as otherwise permitted or required under this Agreement or the Transition Services Agreement, Seller shall, from Closing until [****]* from the Closing Date, refrain from, either alone or in conjunction with any other person or entity, directly or indirectly through Affiliates controlled by Seller, develop, or plan to develop, any other drug candidate or product that, directly or indirectly, reasonably could be expected to be competitive with the Business; provided, however, that

i. any third party that sells drug candidates or products that, directly or indirectly, compete with the Business, may merge with or otherwise acquire Seller, or all or substantially all of Seller's assets, and continue to sell such competing drug candidates and products; and

ii. such combined entity or third party may thereafter merge with or otherwise acquire any other third party (or all or substantially all of such third party's assets) that sells drug candidates or products that, directly or indirectly, compete with a different aspect of the Business, and continue to sell such drug candidates and products.

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(b) The parties recognize that the laws and public policies of various states and jurisdictions may differ as to the validity and enforceability of covenants similar to those set forth in this Section. It is the intention of the parties that the provisions of this Section be enforced to the fullest extent permissible under the laws and policies of each jurisdiction in which enforcement may be sought, and that the unenforceability (or the modification to conform to such laws or policies) of any provisions of this Section shall not render unenforceable, or impair, the remainder of the provisions of this Section. Accordingly, if any provision of this Section shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall be deemed to apply only with respect to the operation of such provision in the particular jurisdiction in which such determination is made and not with respect to any other provision or jurisdiction.

(c) The parties acknowledge and agree that any remedy at law for any breach of the provisions of this Section would be inadequate, and Seller hereby consents to the granting by any court of an injunction or other equitable relief, without the necessity of actual monetary loss being proved, in order that the breach or threatened breach of such provisions may be effectively restrained.

ARTICLE 11

CONFIDENTIALITY

11.1 Confidentiality. Following the Effective Date, the Confidentiality Agreement will remain in full force and effect in accordance with its terms, except as otherwise modified by this Agreement, and all Confidential Information previously or hereafter disclosed from time to time in the course of the performance of this Agreement, shall be held in confidence by the other party pursuant to the Confidentiality Agreement, except as permitted under this Agreement or as necessary to carry out the activities contemplated hereby. Notwithstanding anything to the contrary herein, obligations of the parties under this Agreement are several and not joint with the intention that each party be responsible for their own actions and the actions of their respective representatives and not for actions of any of the other parties hereto. Neither party shall, without the prior written consent of the other party, use the Confidential Information of the other party for any purpose other than performing its obligations or exercising its rights under this Agreement. Each party shall disclose the Confidential Information of the other party only to its directors, employees, consultants, vendors, financing sources and clinicians under written agreements of confidentiality at least as restrictive as those set forth in this Agreement, who have a need to know such information in connection with such party performing its obligations or exercising its rights under this Agreement; provided, however, Buyer shall be severally responsible for any breach of this Agreement or the confidentiality agreement between Buyer and such third party or its representatives, and Buyer agrees, at its sole expense, to take all reasonable measures to restrain such third parties and its representatives from prohibited or unauthorized disclosure or use of the Confidential Information. Notwithstanding the foregoing, no provision of this Agreement shall be construed so as to preclude such disclosure of Confidential Information as may be inherent in or reasonably necessary to the securing from any Governmental Entity of any necessary approval or license related to the CV Products, to the obtaining of patents. Following the Closing, (i) the confidentiality restrictions contained herein

and in the Confidentiality Agreement will not apply to Buyer's use of documents and information concerning the Business (except to the extent that such documents and information contain information related to Seller's other business or the Excluded Assets), the Assets or the Assumed Liabilities, and (ii) any information related to the Business (excluding information related to Seller's other business or the Excluded Assets), the Assets or the Assumed Liabilities shall be considered Confidential Information of Buyer for the purposes of this Agreement and the Confidentiality Agreement. Upon the termination of this Agreement, and upon the written request of the other party, each party shall promptly return to the other party all copies and embodiments of the Confidential Information of such other party, subject to the retention by each party's legal department of one complete copy for archival purposes.

11.2 Publicity. No party to this Agreement shall originate any publicity, news release or other public announcement, written or oral, whether relating to this Agreement or the existence of any arrangement between the parties, without the prior written consent of the other party whether named in such publicity, news release or other public announcement or not, except where such publicity, news release or other public announcement is required by law;

provided, that in such event, the party issuing same shall still be required to consult with the other party whether named in such publicity, news release or public announcement or not, a reasonable time prior to its release to allow the other party to comment thereon and, after its release, shall provide the other party with a copy thereof. If either party, based on the advice of its counsel, determines that this Agreement, or any of the other documents executed in connection herewith, must be filed with the SEC, then such party, prior to making any such filing, shall provide the other party and its counsel with a redacted version of this Agreement (or any other related documents) which it intends to file, and will give due consideration to any comments provided by the other party or its counsel and use reasonable efforts to ensure the confidential treatment by the SEC of those sections specified by the other party or its counsel. Notwithstanding the foregoing, Buyer's financing sources or other professional advisors may publish "tombstones" or other customary announcements relating to the purchase financing and the transactions contemplated hereby.

ARTICLE 12

TERM AND TERMINATION

12.1 Termination.

This Agreement may be terminated prior to the Closing:

(a) By Buyer, upon written notice (A) at any time prior to Closing, if Seller shall have failed to comply in any material respect with any of its obligations in this Agreement, and such failure shall be continuing, or if any one or more of the representations or warranties of Seller contained in this Agreement (i) that is qualified by materiality shall prove to be inaccurate in any respect or (ii) that is not so qualified shall prove to be inaccurate in any material respect; provided, however, that Buyer shall give Seller thirty (30) days to cure any such failure to so comply or to remedy any such inaccuracy under this Agreement; or (B) at Closing, if any of the conditions precedent to the performance of Buyer's obligations at the Closing under Article 9 shall not have been fulfilled (unless the failure results primarily from Buyer's breach of any representation, warranty, covenant or agreement contained this Agreement); provided, however,

that in the event that Buyer shall desire to terminate this Agreement as a result of the failure of the accuracy of a representation or warranty at the Closing, Buyer shall be required to give Seller prior notice that it intends to terminate this Agreement as a result of such inaccuracy, and Seller shall have a reasonable period of time, not to exceed thirty (30) days, to cure such inaccuracies.

(b) By Seller, upon written notice (A) at any time prior to Closing, if Buyer shall have failed to comply in any material respect with any of its obligations in this Agreement and such failure shall be continuing, or if any one or more of the representations or warranties of Buyer contained in this Agreement (i) that is qualified by materiality shall prove to be inaccurate in any respect or (ii) that is not so qualified shall prove to be inaccurate in any material respect; provided, however, that Seller shall give Buyer thirty (30) days to cure any such failure to so comply or any such inaccuracy under this Agreement; or (B) at the Closing, if any of the conditions precedent to the performance of its obligations at the Closing under Article 9 shall not have been fulfilled (unless the failure results primarily from Seller's breach of any representation, warranty, covenant or agreement contained this Agreement); provided, however, that in the event that Seller shall desire to terminate this Agreement as a result of the failure of the accuracy in any material respect of a representation or warranty at the Closing, Seller shall be required to give Buyer prior notice that it intends to terminate this Agreement as a result of such inaccuracy and Buyer shall have a reasonable period of time, not to exceed thirty (30) days, to cure such inaccuracies.

(c) By either party if the Closing shall not have occurred on or before March 31, 2008, provided, that such date shall be extended to June 30, 2008 in the event the waiting period under the HSR is extended, restarted or renewed beyond the initial 30-day period, unless such failure to close is primarily the result of the breach of any representations, warranties, covenants or agreements contained in this Agreement by the party seeking to terminate. Notwithstanding the foregoing, in the event the Closing shall not have occurred on or before May 1, 2008 and the [****]*, Buyer may terminate this Agreement on or after May 1, 2008, provided, that Buyer, prior to May 1, 2008, shall have used its best efforts to obtain [****]*.

12.2 Effect of Termination. In the event of termination of this Agreement prior to the Closing, in accordance with its terms: (i) each party will redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the Effective Date, to the party furnishing the same; (ii) the provisions of Article 11 shall continue in full force and effect; and (iii) no party hereto shall have any Liability or further obligation to any other party to this Agreement, except for willful breach.

12.3 Effectiveness of Termination. Termination under this Article 12 shall not become effective so long as the alleged grounds for termination are in dispute and the matter(s) at issue have been submitted for resolution pursuant to this Agreement.

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ARTICLE 13

INDEMNIFICATION

13.1 Survivability of Representations and Warranties. The representations and warranties made in Articles 6 and 7 or any instrument delivered pursuant to this Agreement shall not survive after the Closing Date; provided, however, that the representations and warranties of Seller in Sections 6.5 and 6.6 shall survive until [****]* (the "Survival Date").

13.2 Indemnification by Buyer. Buyer indemnifies and holds harmless Seller, and any of its directors, officers, employees, Affiliates, controlling persons, agents and representatives (the "Seller Indemnitees") from and against any Liabilities (a) to the extent such Liabilities relate to the Assumed Liabilities, (b) arising from Buyer's breach of or non-performance of any covenant or agreement under this Agreement or any instrument delivered pursuant to this Agreement, or (c) arising from the conduct of the Business after the Closing.

13.3 Indemnification by Seller. Seller indemnifies and holds harmless Buyer, and any of its directors, officers, employees, Affiliates, controlling persons, agents and representatives (the "Buyer Indemnitees") from and against any Liabilities (a) to the extent such Liabilities relate to the Excluded Liabilities, (b) arising from Seller's breach of or non-performance of any covenant or agreement under this Agreement or any instrument delivered pursuant to this Agreement, (c) arising from the conduct of the Business on or prior to the Closing, or (d) arising from any breach of the representations or warranties of Seller contained in Section 6.6 (Intellectual Property). [****]* shall have no obligations with respect to any [****]*.

13.4 Claims. Any Buyer Indemnitee or Seller Indemnitee claiming it may be entitled to indemnification under this Article 13 (the "Indemnified Party") shall give prompt notice to the other party (the "Indemnifying Party") of each matter, action, cause of action, claim, demand, fact or other circumstances upon which a claim for indemnification (a "Claim") under this Article 13 may be based. Such notice shall contain, with respect to each Claim, such facts and information as are then reasonably available, the specific basis for indemnification hereunder, together with the amount or, if not then reasonably ascertainable, the estimated amount, determined in good faith. Failure to give prompt notice of a Claim hereunder shall not affect the Indemnifying Party's obligations under this Section, except to the extent the Indemnifying Party is prejudiced by such failure.

13.5 Assertion of Claims. No claim shall be brought under Sections 13.2, 13.3 or 13.4 hereof unless the Buyer Indemnitees, or any of them, or the Seller Indemnitees, or any of them, as the case may be, at any time prior to the applicable Survival Date, provide Buyer or Seller, as the case may be, with written notice of the existence of any such claim, reasonably specifying the nature and basis of such claim and the amount thereof, to the extent known; provided, that, the failure so to provide such notice to Buyer or Seller, as the case may be, will not relieve Buyer or Seller, as the case may be, from any Liability which they may have to the Buyer Indemnitees or

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the Seller Indemnitees, as the case may be, under this Agreement or otherwise, except to the extent that Buyer or Seller, as the case may be, reasonably demonstrates that such failure results in the loss or compromise of any rights or defenses of Buyer or Seller, as the case may be, and that Buyer or Seller, as the case may be, were not otherwise aware of such action or claim. Upon the giving of such written notice as aforesaid, the Buyer Indemnitees, or any of them, or the Seller Indemnitees, or any of them, as the case may be, shall have the right to commence legal proceedings prior or subsequent to the Survival Date for the enforcement of their rights under Sections 13.2, 13.3 or 13.4 hereof, as the case may be.

13.6 Payment of Claims; Limitation on Indemnification. Notwithstanding anything to the contrary in Sections 13.3 or 13.4, any Liability under Section 13.3(d) shall limited as follows: [****]*.

13.7 Limitation; Exclusivity. No Claim shall be made or have any validity unless the Indemnified Party shall have given written notice of such Claim to the Indemnifying Party. If full recovery under any such Claim is not had within [****]* of such written notice, arbitration, pursuant to Section 14.4, must be commenced within thirty (30) days following the end of such [****]* or such Claim shall be invalidated. This Article 13 provides the exclusive means by which a party may assert Claims against the other party and Section 14.4 provides the exclusive means by which a party may bring actions against the other party with respect to any breach by the other party of its indemnification obligations under this Article 13.

ARTICLE 14

MISCELLANEOUS

14.1 Survival of Covenants and Agreements. The covenants and agreements contained in Sections 2.1, 2.2, 2.3 and 2.4 shall survive Closing [****]*. All other covenants and agreements herein shall survive Closing until [****]* the last date on which such covenant or agreement is to be performed or, if no such date is specified [****]*. Any covenant or agreement that would otherwise terminate in accordance with the above will continue to survive if a notice of a Claim shall have been timely given under Article 13 on or prior to such termination date, until the related claim for indemnification has been satisfied or otherwise resolved as provided in Article 13.

14.2 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall (i) confer on any person other than the parties hereto (and Buyer Indemnitees and Seller Indemnitees referred to herein) and their respective successors or assigns any rights (including third party beneficiary rights), remedies, obligations or liabilities under or by reason of this Agreement, or (ii) constitute the parties hereto as partners or as participants in a joint venture. This Agreement shall not provide third parties with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to the terms of this Agreement. No third party shall have any right, independent of any right which

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may exist irrespective of this Agreement, under or granted by this Agreement, to bring any suit at law or equity for any matter governed by or subject to the provisions of this Agreement.

14.3 Force Majeure. If the performance by either party of any obligation under this Agreement is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the party liable to perform, unless conclusive evidence to the contrary is provided, the party so affected shall, upon giving written notice to the other party, be excused from such performance to the extent of such prevention, restriction, interference or delay, provided that the affected party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of this Agreement may be required in order to arrive at an equitable solution.

14.4 Governing Law; Jurisdiction; Dispute Resolution and Arbitration. This Agreement shall be deemed to have been made in the State of California and its form, execution, validity, construction and effect shall be determined in accordance with the laws of the State of California, without giving effect to the principles of conflicts of law thereof. Disputes arising out of, relating to or in connection with this Agreement, or in relations between the parties with respect to the subject matter hereof, for any reason or under any circumstances, will be finally settled by a single arbitrator in a binding arbitration in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules and Procedures (the "JAMS Rules"). Upon receipt of written notice of the existence of a dispute by one party hereto to the other, the parties shall, within thirty (30) days conduct a meeting of one or more senior executives of each party, with full settlement authority, in an attempt to resolve the dispute. Each party shall make available appropriate personnel to meet and confer with the other party reasonably within the thirty-day period. Upon the expiration of the thirty-day period, or upon the termination of discussions between the senior executives, either party may elect arbitration of any dispute by written notice to the other (the "Arbitration Notice"). The arbitration shall be held in San Francisco, California before one (1) arbitrator from JAMS having substantial experience as a jurist and mediator with significant disputes in the biotechnology and/or pharmaceuticals industry selected by the mutual agreement of the Buyer and the Seller; provided, however, that if such parties cannot agree on an arbitrator within thirty (30) days of the Arbitration Notice, either party may request JAMS select the arbitrator, and JAMS shall select an arbitrator pursuant to the procedure set out by the JAMS rules, provided, however, that the arbitrator selected be a former judge with at least fifteen (15) years experience addressing as a jurist and/or mediator significant disputes in the biotechnology and or pharmaceutical industry. The arbitration shall be administered by JAMS pursuant to its AAA Rules. Judgment on the arbitration award may be entered in any court having jurisdiction. The arbitrator may, in the arbitration award, allocate for payment by the non-prevailing party all or part of the costs of the arbitration, including fees of the arbitrator and the reasonable attorneys' fees and costs incurred by the prevailing party. This Section shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In respect of any actions for injunctive or other equitable relief hereunder, any action or proceeding may be brought against any party in the state and federal courts located in the city of San Francisco, California and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

14.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, it shall be modified, if possible, to the minimum extent necessary to make it valid and enforceable or, if such modification is not possible, such provision shall be stricken and the remaining provisions shall remain in full force and effect; provided, however, that if a provision is stricken so as to significantly alter the economic arrangements of this Agreement, the party adversely affected may terminate this Agreement upon [****]* prior written notice to the other party. If any of the terms or provisions of this Agreement is in conflict with any applicable statute or rule of law in any jurisdiction, then such term or provision shall be deemed inoperative in such jurisdiction to the extent of such conflict and the parties will renegotiate the affected terms and conditions of this Agreement to resolve any inequities.

14.6 Entire Agreement. This Agreement and the ancillary transaction documents to be executed and delivered pursuant to this Agreement are intended to define the full extent of the legally enforceable undertakings and representations of the parties hereto, and no promise or representation, written or oral, which is not set forth explicitly in this Agreement or such ancillary transaction documents is intended by either party to be legally binding; provided, however, in the event this Agreement terminates, the Confidentiality Agreement shall continue in full force and effect pursuant to its terms. Each of the parties acknowledge that in deciding to enter into this Agreement and to consummate the transaction contemplated hereby none of them has relied upon any statements or representations, written or oral, other than those explicitly set forth in this Agreement.

14.7 Amendment. This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by both parties that specifically refers to this Agreement.

14.8 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth below (or at such other addresses as shall be specified by notice given in accordance with this Section):

If to Seller:

PDL BioPharma, Inc.
Attention: General Counsel
1400 Seaport Boulevard
Redwood City, CA 94063
Facsimile: 650-454-1468
E-mail: Francis.Sarena@pdl.com

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with a copy to: (not to constitute notice)	DLA Piper US LLP Attention: Howard Clowes 153 Townsend Street, Suite 800 San Francisco, CA 94107-1957 Facsimile: 415- 659-7410 E-mail: howard.clowes@dlapiper.com
If to Buyer:	EKR Therapeutics, Inc. Attention: Richard DeSimone 7 East Frederick Place Cedar Knolls, NJ 07927 Facsimile: +1 (866) 620-6848 E-mail: r.desimone@ekrtx.com
with a copy to: (not to constitute notice)	Milbank, Tweed, Hadley & McCloy LLP Attention: Robert S. Reder, Esq. One Chase Manhattan Plaza New York, New York 10005 Facsimile No.: +1 (212) 822-5680 E-mail: RReder@milbank.com

14.9 Assignment. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, but this Agreement shall not be assignable by either party hereto without the express written consent of the other party hereto which will not be unreasonably withheld, provided, however, that Buyer may merge or consolidate with, or assign any or all of its rights, interests and obligations hereunder to, a direct or indirect wholly-owned subsidiary of Buyer, provided that no such merger, consolidation or assignment shall relieve Buyer of its obligations hereunder, [****]*.

14.10 No Agency. It is understood and agreed that each party shall have the status of an independent contractor under this Agreement and that nothing in this Agreement shall be construed as authorization for either party to act as agent for the other. Neither party shall incur any Liability for any act or failure to act by employees of the other party.

14.11 Construction.

(a) This Agreement has been prepared jointly and shall not be strictly construed against either party.

(b) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

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(c) Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Exhibits” and “Schedules” are intended to refer to Articles and Sections and Exhibits and Schedules to this Agreement.

(d) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14.12 Payment of Expenses. Except as otherwise set forth in this Agreement or in the Transition Services Agreement, all costs and expenses associated with this Agreement and the transactions contemplated thereby, including the fees of counsel and accountants, shall be borne by the party incurring such expenses.

14.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Any executed counterpart delivered by facsimile or other means of electronic transmission shall be deemed an original for all purposes.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties, through their authorized officers, have duly executed this as of the date first written above.

PDL BioPharma, Inc.,
a Delaware corporation

By: /s/ L. Patrick Gage
Name: L. Patrick Gage
Title: Chief Executive Officer

By: /s/ Andrew Guggenhime
Name: Andrew Guggenhime
Title: Senior Vice President and Chief Financial Officer

EKR Therapeutics, Inc.,
a Delaware corporation

By: /s/ Howard Weisman
Name: Howard Weisman
Title: Chairman and Chief Executive Officer

By: /s/ Richard DeSimone
Name: Richard DeSimone
Title: Chief Financial Officer

CONFIDENTIAL PROVISIONS REDACTED

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

PDL BIOPHARMA, INC.,
a Delaware corporation

and

GMN, INC.,
a Delaware corporation

Dated as of February 21, 2008

CONFIDENTIAL TREATMENT REQUESTED

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LIST OF EXHIBITS, ATTACHMENT AND SCHEDULES

EXHIBITS

ATTACHMENTS

SCHEDULES

CONFIDENTIAL TREATMENT REQUESTED

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of February 21, 2008 (the "Effective Date") between PDL BioPharma, Inc., a Delaware corporation ("Seller"), and GMN, Inc., a Delaware corporation ("Buyer"), a wholly owned subsidiary of Genmab A/S, a corporation existing under the laws of Denmark.

RECITALS

A. Seller is engaged in, among other businesses, the Operations.

B. Seller desires to sell, transfer and assign to Buyer, and Buyer wishes to acquire, all right, title and interest in and to the Assets, in exchange for consideration consisting of cash and the assumption of certain Liabilities related to the Assets, pursuant to the terms and conditions set forth in this Agreement.

C. Concurrently with the execution and delivery of this Agreement, Buyer and Seller are executing and delivering that certain Clinical Drug Substance Supply Agreement in the form attached hereto as Exhibit F, to be effective as of the Closing Date.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties to this Agreement agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "3750 Lease" means that certain Lease Agreement between St. Paul Properties, Inc., as landlord, and Seller, as tenant, dated March 7, 1996, as amended February 28, 1999 and September 12, 2003 covering approximately 2,034 square feet of space at premises known as 3750 Annapolis Lane, Plymouth, MN 55447.

1.2 "3850 Lease" means that certain Lease Agreement between St. Paul Properties, Inc., as landlord, and Seller, as tenant, dated May 31, 2001 covering approximately 27,259 square feet of space at premises known as 3850 Annapolis Lane, Plymouth, MN 55447.

1.3 "Affiliate" with respect to any party shall mean any entity that is directly or indirectly controlling, controlled by or under common control with such party.

1.4 "Agreement" shall have the meaning given in the preamble above.

1.5 "Arbitration Notice" shall have the meaning given in Section 13.2.

1.6 "Assets" shall have the meaning given in Section 2.1.

1.7 "Assignment and Assumption Agreement" shall have the meaning given in Section 4.2(a)(iv).

1.8 "Assumed Contracts" shall have the meaning given in Section 2.1(e).

1.9 "Assumed Liabilities" shall have the meaning given in Section 2.3.

1.10 "[****]*" shall have the meaning given in Section 11.2.

1.11 "Buyer Indemnitees" shall have the meaning given in Section 12.3.

1.12 "Buyer Notice Deadline" shall have the meaning given in Section 7.7(a).

1.13 "Buyer Termination Deadline" shall have the meaning given in Section 7.7(b).

1.14 "Claim" shall have the meaning given in Section 12.4.

1.15 "Clinical Drug Substance Supply Agreement" shall mean the agreement entered into by Buyer and Seller effective as of the Closing Date relating to manufacture and supply of certain products.

1.16 "Closing" and "Closing Date" shall have the respective meanings given in Section 4.1.

1.17 "Confidential Information" shall have the meaning ascribed to it in the Confidentiality Agreement.

1.18 "Confidentiality Agreement" shall mean that certain Mutual Confidentiality Agreement between Buyer and Seller dated November 13, 2007, as amended.

1.19 "Consent" means any approval, consent, ratification, waiver or other authorization.

1.20 "Contemplated Transactions" shall mean the transactions contemplated by this Agreement, including all transactions contemplated by the other agreements contemplated by this Agreement.

1.21 "Contract" means any agreement, contract, lease, covenant, promise or undertaking (whether written or oral and whether express or implied).

1.22 "Cure Notice Deadline" shall have the meaning given in Section 7.6.

1.23 "Current Survey" shall mean an ALTA Non-Topographical Survey prepared by a surveyor approved by Seller and licensed to perform surveying work in the State of Minnesota certified to Buyer and the Title Company and with such other certification as may be reasonably

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required by Title Company, meeting the minimum detail standard requirements adopted by ALTA in 2005.

1.24 "Development Agreement" shall have the meaning given in Section 2.1(e).

1.25 "Effective Date" shall have the meaning given in the preamble above.

1.26 "Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

1.27 "Environment" means soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

1.28 "Environmental Cure Notice Deadline" shall have the meaning given in Section 7.7(b).

1.29 "Environmental Cure Response Notice" shall have the meaning given in Section 7.7(b).

1.30 "Environmental Governmental Authorizations" shall mean the permits described in Attachment 1.30.

1.31 "Environmental Inspections" shall have the meaning given in Section 7.5.

1.32 "Environmental Laws" means any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment;

(c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention; or

(h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets;

Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, the Toxic Substances and Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act.

1.33 "Environmental Remediation" shall mean the cure or correction of an Environmental Remediation Obligation to the levels required by Environmental Laws applicable to the Real Property.

1.34 "Environmental Remediation Obligation" shall have the meaning given in Section 7.7(b).

1.35 "Environmental Remediation Obligation Notice" shall have the meaning given in Section 7.7(b).

1.36 "Excluded Assets" shall have the meaning given in Section 2.2.

1.37 "Excluded Liabilities" shall have the meaning given in Section 2.4.

1.38 "Facilities" shall mean the Real Property, the Leased Properties and the biologic manufacturing facilities thereon.

1.39 "Governmental Authorization" means any Consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or pursuant to any Legal Requirement.

1.40 "Governmental Entity" shall mean any court, tribunal, arbitrator, authority, agency, commission, department, bureau, board, including any board of fire underwriters, fire insurance rating organization, regulatory body, official or other instrumentality of the government of the United States or of any foreign or multinational body, any state or any political subdivision of any such government or body (whether state, provincial, county, city, municipal or otherwise) or any other governmental, public or quasi-public authority.

1.41 "Hazardous Substances" shall mean any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental laws as a "hazardous constituent," "hazardous substance," "hazardous material,"

waste," "medical waste," "biohazardous waste," "extremely hazardous waste," pollutant," "toxic pollutant," "toxic waste", "toxic substance" or "contaminant," or any other names intended to identify substances by reason of properties that are deleterious to the Environment, natural resources or public health or safety including by reason of, without limitation, ignitability, corrosiveness, reactivity, carcinogenicity, toxicity, and reproductive toxicity. The term Hazardous Substance shall include, without limitation, the following: (i) a "Hazardous Substance," "Hazardous Material," "Hazardous Waste," or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq. or the Solid Waste Disposal Act, 42 U.S.C. Section 6901, et seq., including any regulations promulgated thereunder, as any of the foregoing may be amended; (ii) "Oil" or a "Hazardous Substance" under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as may be amended; as well as petroleum and any other hydrocarbonic substance, fraction, distillate or by-product; (iii) mold; (iv) asbestos and any asbestos containing material, urea formaldehyde and polychlorinated biphenyls; and/or (v) a substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures, or byproducts, damages or threatens to damage the Environment, natural resources or public health or safety, or is required by any law or public entity to be remediated, including remediation which such law or public entity requires in order for property to be put to any lawful purpose.

1.42 "HSR" shall mean the United States Hart-Scott-Rodino Antitrust Improvements Act of l976, as amended, and rules thereunder.

1.43 "HSR Filings" shall have the meaning given in Section 7.1.

1.44 "Identified Employee" shall have the meaning given in Section 7.8(a).

1.45 "Indemnified Party" shall have the meaning given in Section 12.4.

1.46 "Indemnifying Party" shall have the meaning given in Section 12.4.

1.47 "Inspection Notice Deadline" shall have the meaning given in Section 7.7(a).

1.48 "Inspection Response Notice" shall have the meaning given in Section 7.7(a).

1.49 "Intellectual Property Assets" shall have the meaning given in Section 5.12(a).

1.50 "JAMS" shall have the meaning given in Section 13.2.

1.51 "JAMS Rules" shall have the meaning given in Section 13.2

1.52 "Knowledge" shall mean, whenever any representation or warranty is made hereunder "to the Knowledge of" a party or to a party's Knowledge, (i) with respect to Seller, the actual knowledge of (A) any officer of Seller or any employee of Seller listed on Attachment 1.52 or (B) with respect to Buyer, the officers of Buyer and (ii) the knowledge that any such person referenced in clause (i) hereof, as a prudent business person, would have obtained in the usual course of the performance of his or her professional responsibilities to such party.

1.53 "Lease Assignment Agreement" shall have the meaning given in Section 4.2(a)(v).

1.54 "Leased Properties" shall mean the facilities subject to the Leases.

1.55 "Leases" means, collectively, the 3750 Lease and the 3850 Lease.

1.56 "Legal Requirement" means any requirement imposed by any constitution, law, ordinance, principle of common law, code, regulation, statute, treaty or order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Entity or arbitrator.

1.57 "Liability" or "Liabilities" shall mean liabilities or obligations of any kind or nature, primary or secondary, direct or indirect, absolute or contingent, known or unknown, disputed or undisputed, liquidated or unliquidated, including but not limited to any liabilities for claims of product liability, personal injury or death, liability in tort or contract (including unripened liabilities due to past actions, failures to act or sales), indebtedness, and any U.S. Food and Drug Administration or other Governmental Entity action or notification, and all costs and expenses (including reasonable attorneys' fees), incurred in connection with the defense of any such claims.

1.58 "Limited Warranty Deed" shall have the meaning given in Section 4.2(a)(ii).

1.59 "Material Adverse Effect" with respect to any Person shall mean any event or situation that has a material adverse change or effect, respectively, on: [****]*.

1.60 "Minimum Assessment Agreement" shall have the meaning given in Section 2.1(e).

1.61 "Note" shall mean the Tax Increment Revenue Note Series 2007 made by The Brooklyn Park Economic Development Authority, dated August 1, 2007.

1.62 "Note Assignment" shall have the meaning given in Section 4.2(a)(v).

1.63 "Operations" shall mean the biologic manufacturing operations conducted by Seller at the Facilities.

1.64 "Operations Employee" shall have the meaning given in Section 5.19.

1.65 "Order" shall mean any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Entity or arbitrator.

1.66 "Ordinary Course of Business" shall mean an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

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(a) is recurring and consistent in nature, scope and magnitude with the past practices of such Person and occurs in the normal day to day operations of such Person; and

(b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature.

1.67 "Permitted Encumbrances" shall mean the Encumbrances set forth on Schedule 5.8(d)(ii) and as defined in Section 7.6 herein.

1.68 "Person" shall mean an individual, limited or general partnership, corporation (including any non-profit corporation), business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, estate, organization, labor union or other entity or a Governmental Entity.

1.69 "Proceeding" shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Entity, private judge, tribunal or arbitrator(s).

1.70 "Product-Related Inventory" shall mean the resin, media, master cell banks, working cell bank, stability pools and retains and clinical supplies, including work in progress and finished goods used in the production of the "Products" (as such term is defined in the Clinical Drug Substance Supply Agreement).

1.71 "Property Condition" shall have the meaning given in Section 6.9.

1.72 "Purchase Price" shall have the meaning given in Section 3.1.

1.73 "Real Property" shall mean the parcel of land located in the City of Brooklyn Park, Minnesota and described in Schedule 5.8(d), together with all buildings, structures, improvements and fixtures situated thereon, all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining said parcel of land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to said parcel of land by reason of a change of grade of any street or highway, and all privileges, rights, easements, rights of way, appurtenances thereon and thereto, including mineral, air and development rights appurtenant thereon and thereto.

1.74 "Real Property Inspection" shall have the meaning given in Section 7.5.

1.75 "Release" means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

1.76 "Response Notice" shall have the meaning given in Section 7.6.

1.77 "Retained Lease" shall have the meaning given in Section 7.3.

1.78 "SEC" shall mean the United States Securities and Exchange Commission.

1.79 "Seller Contract" shall mean any Contract (a) under which Seller has or may acquire any rights or benefits; (b) under which Seller has or may become subject to any obligation or liability; or (c) by which Seller or any of the Assets is or may become bound.

1.80 "Seller Indemnitees" shall have the meaning given in Section 12.2.

1.81 "Seller's Records" shall mean those certain agreements, plans, documentation and information concerning the Facilities, including all environmental reports, compliance audits, notices of violations and responses thereto, as well as all agency correspondence pertaining to compliance with Environmental Laws or an Environmental Remediation Obligation on the Real Property, in Seller's possession or control but excluding Environmental Governmental Authorizations.

1.82 "Settlement Statement" shall have the meaning given in Section 4.3(h).

1.83 "Software" means the software or firmware, if any, embedded in any Tangible Personal Property and documentation related thereto or associated therewith, except for any software licensed to Seller installed on any computer (including servers and other information technology hardware) or electronic communication devices (e.g., Blackberries) included in the Tangible Personal Property.

1.84 "Supplies" shall mean, collectively, (i) all inventory of Seller of raw materials, repair stock, parts, pallets and supplies wherever located or in transit for use or consumption in the Operations but excluding Product-Related Inventory; (ii) all assignable warranties and licenses issued to Seller in connection with the Supplies; and (iii) any assignable claims, credits and rights of recovery with respect to the Supplies.

1.85 "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Product-Related Inventory) of every kind owned or leased by Seller (whether or not carried on Seller's books) used in the Operations and located at the Facilities and all maintenance records and other documents relating thereto.

1.86 "Third Party Acquisition" shall have the meaning given in Section 7.4.

1.87 "Third Party Consents" shall have the meaning given in Section 5.4(b).

1.88 "Threat of Release" means a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

1.89 "Threshold Amount" shall have the meaning given in Section 12.6(a).

1.90 "Title Commitment" shall have the meaning given in Section 7.6.

1.91 "Title Company" shall mean First American Title Insurance Company or such other reputable title insurance company authorized to transact business in the State of Minnesota as may be selected by Buyer.

1.92 "Title Exceptions" shall have the meaning given in Section 7.6.

1.93 "Title Objections" shall have the meaning given in Section 7.6.

1.94 "Trade Secrets" shall have the meaning given in Section 2.1(i).

1.95 "Transition Services Agreement" shall mean the agreement entered into by Buyer and Seller as of the Closing Date, whereby (i) Buyer shall, for fees specified therein, provide certain services to Seller, including, continued development of ongoing life cycle management projects and continued assistance and support of a Seller-sponsored clinical trial, and information technology and administrative services, to the extent and for the periods of time and at the costs as specified therein, and (ii) Seller shall, for fees specified therein, provide certain services to Buyer, including information technology and administrative services, to the extent and for the periods of time and at the costs as specified therein.

1.96 "Unsatisfactory Condition" shall have the meaning given in Section 7.7(a).

1.97 "Unsatisfactory Inspection Notice" shall have the meaning given in Section 7.7(a).

1.98 "WARN" shall have the meaning given in Section 7.8(c).

ARTICLE 2
TRANSFER OF ASSETS; LICENSE AND SUBLICENSE

2.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, Seller shall sell, transfer, assign, convey, or deliver, as specified below, to Buyer, and Buyer shall acquire all of Seller's right, title and interest in and to the property and assets of Seller identified in this Section 2.1 (collectively, the "Assets"):

(a) Real Property. Seller's fee ownership interest in the Real Property.

(b) Leased Real Property. Seller's leasehold or other non-fee ownership interest in the Leased Properties, including any security deposit(s) being held for benefit of Seller by any lessor.

(c) Governmental Authorizations. Seller's interest in all transferable Governmental Authorizations owned by Seller or used in or necessary for the operation of the Assets.

(d) Equipment. The Tangible Personal Property, including, without limitation, the items of equipment each having a book value in excess of [****]* listed in Attachment 2.1(d).

(e) Assumed Contracts. All rights and benefits of Seller in existence as of the Closing Date arising after the Closing Date under the contracts listed in Attachment 2.1(e) (the "Assumed Contracts"), including but not limited to that certain Contract for Private Development by and between the Brooklyn Park Economic Development Authority and Seller, dated October 31, 2002 (the "Development Agreement") and that certain Assessment Agreement and Assessor's Certificate by and between Brooklyn Park Development Authority and Seller, dated February 8, 2005 (the "Minimum Assessment Agreement"), all transferable statutory, express or implied construction warranties applicable to the improvements on the Real Property and all transferable express or implied warranties from manufacturers, sellers or lessors of any item or component part of any Tangible Personal Property.

(f) Supplies. The Supplies.

(g) Note. All of Seller's interest as "Owner" under the Note, in accordance with Section 7 of the Note pertaining to Registration and transfer.

(h) Books and Records. Any documentation related to operation of the Facilities (excluding documentation relating solely to the manufacture of any specific product), including standard operating procedures, equipment manuals, historical supply cost data, maintenance records, vendor supply lists and current inventories of supplies.

(i) Trade Secrets. Know-how, trade secrets, confidential or proprietary information, Software, technical information, data, process technology, plans, designs, drawings and blue prints that are related to the Operations (excluding any of same relating to the manufacture of any specific product) (collectively, "Trade Secrets").

2.2 Excluded Assets. Buyer hereby acknowledges that Seller is not selling, transferring, assigning, conveying or delivering under this Agreement any assets, rights or interests of Seller (collectively, the "Excluded Assets") not listed or described in Section 2.1, including any assets or rights used in the research, development, manufacture, control, packaging or release, marketing or sale of Seller's products, and the Product-Related Inventory.

2.3 Assumed Liabilities. Buyer shall assume and agree to honor, pay and discharge when due the following Liabilities of Seller (the "Assumed Liabilities"):

(a) all Liabilities of Seller under the Assumed Contracts, but only to the extent such Liabilities arise from any event, circumstance or condition occurring after the Closing Date; and

(b) all Liabilities of Seller for the Leased Properties (including all costs of preparing the Leased Real Properties for return to the landlord upon the expiration or termination

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of the lease, which shall be deemed to arise after the Closing Date), but only to the extent such Liabilities arise from any event, circumstances or condition occurring after the Closing Date; and

(c) all Liabilities of Seller under contracts with third parties providing utility services to the Facilities.

2.4 Excluded Liabilities. Seller hereby acknowledges that Buyer is not assuming hereunder any Liabilities (collectively, the "Excluded Liabilities") not specifically set forth in Section 2.3, including, without limitation, those Liabilities expressly set forth below:

(a) any Liability or obligation of Seller of any nature owed to, or on behalf or for the benefit of, any employees, directors, former employees, agents or independent contractors, whether or not employed by Buyer after the Closing, that arises out of or relates to (A) the employment or service provider relationship between Seller and any such Person(s) (including, but not limited to, claims for compensation, discrimination, harassment, or retaliation, or rights or other interest in any health, welfare, retirement or other benefit plan); or (B) events or conditions occurring on or before the Closing Date (including the transactions contemplated by this Agreement);

(b) Liabilities arising out of any injury to individuals or property as a result of the ownership, possession or use of the Assets or the Operations, including without limitation the manufacture, administration or other use of any "Product" (as such term is defined in the Clinical Drug Substance Supply Agreement), prior to the Closing Date or the administration or other use after the Closing Date of any Product manufactured prior to the Closing Date, except to the extent attributable to the gross negligence or willful misconduct of Buyer;

(c) all accounts payable of Seller arising prior to the Closing Date; and

(d) Liabilities of Seller relating to or arising under this Agreement.

2.5 Risk of Loss. All risk of loss with respect to the Assets (whether or not covered by insurance) shall be on Seller up to the time of Closing, whereupon such risk of loss shall pass to Buyer.

ARTICLE 3
CONSIDERATION

3.1 Purchase Price. On the Closing Date, in consideration of Seller's sale of the Assets to Buyer, Buyer will assume the Assumed Liabilities and pay to Seller an aggregate purchase price in the amount equal to Two Hundred Forty Million United States Dollars ($240,000,000) (the "Purchase Price").

3.2 Method of Payment. The payment to be made by Buyer pursuant to Section 3.1, as adjusted by the closing prorations and other cost allocations for both Buyer and Seller set forth in this Agreement, as shown on the Settlement Statement, shall be made by wire transfer in immediately available funds to the proper account of the Title Company (as identified by the Title Company) on the Closing Date. Buyer and Seller shall coordinate with each other and the Title Company to agree to wiring deadlines such that Buyer will initiate the wire to the Title

Company at an early enough time for the Title Company to wire the funds into an account identified by the Seller in time for Seller to earn overnight interest on such funds as of the Closing Date (i.e., so that the funds do not remain un-invested overnight immediately following Closing). Provided Buyer has met any previously agreed to wiring deadline (as evidenced by a Fed Wire Reference Number with the appropriate time stamp), Buyer shall have no liability for any delays in the transmittal of the wire from the Title Company to the Seller or the receipt or investment of the funds by the Seller's designated depository account representative (except to the extent such delay is caused by Buyer's action).

3.3 Allocation of Purchase Price. Prior to Closing, Buyer and Seller will make reasonable efforts to agree on an allocation of the Purchase Price among the Assets in a manner that is consistent with the principles of Section 1060 of the Internal Revenue Code of 1986, as amended (or any successor provision of any future tax law, or any comparable provision of state, local or foreign tax law). Buyer and Seller will (i) act in accordance with the allocation in the preparation of financial statements and the preparation and filing of all tax returns (including the preparation and filing of IRS Form 8594) and (ii) take no position inconsistent with the allocation for all tax purposes. In the event that such allocation is disputed by any taxing authority, the party receiving notice of the dispute shall promptly notify the other party hereto and shall forward to such other party copies of all correspondence with such taxing authority in respect of such disputed allocation.

ARTICLE 4
CLOSING

4.1 Closing. The Closing of the sale of the Assets and the consummation of the other transactions contemplated by this Agreement shall be held at the offices of Seller at the Real Property (the "Closing") as promptly as practicable, but no later than the date five (5) business days after all conditions (other than the respective delivery obligations of the parties) hereto have been satisfied or waived, or at such other place, time or date as may be agreed to by the parties to this Agreement (the "Closing Date").

4.2 Actions at Closing. At the Closing, transfer of the Assets to Buyer will be effected by Seller pursuant to such good and sufficient instruments of conveyance, transfer and assignment as shall be necessary to transfer to Buyer good and valid title to the Assets.

(a) Deliveries by Seller at Closing. The purchase of the Assets by Buyer in accordance with the terms of this Agreement are subject to Seller's delivery to Buyer at the Closing of the following instruments, documents, agreements and certificates:

(i) the General Assignment and Bill of Sale substantially in the form attached hereto as Exhibit A, duly executed by Seller;

(ii) the limited warranty deed for the Real Property substantially in the form attached hereto as Exhibit B (the "Limited Warranty Deed"), duly executed by Seller;

(iii) the Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit C (the "Assignment and Assumption Agreement"), duly executed by Seller;

(iv) a Lease Assignment and Assumption Agreement for each of the Leased Properties substantially in the form attached hereto as Exhibit D (the "Lease Assignment and Assumption Agreement"), duly executed by Seller;

(v) the Note Assignment Agreement substantially in the form attached hereto as Exhibit E (the "Note Assignment"), duly executed by Seller;

(vi) the Transition Services Agreement substantially in the form attached hereto as Exhibit G, duly executed by Seller;

(vii) all of the Third Party Consents in substantially the form attached hereto as Exhibit H signed by the parties set forth in Attachment 4.2(a), including the consent of the landlord under the Leases to the assignment thereof to Buyer;

(viii) a FIRPTA Certificate containing such information as is required by I.R.C. § 1445(b)(2) and its regulations;

(ix) an Affidavit of Title or such affidavits as the Title Company shall reasonably require indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Real Property; that there has been no skill, labor or material furnished to the Real Property for which payment has not been made or for which mechanics' liens could be filed; and that there are no other unrecorded interests in the Real Property;

(x) a Well Certificate if required by Minnesota Statutes, Chapter 1031;

(xi) a Sewer System Certificate if required by Minnesota Statutes, §115.55;

(xii) a Certificate of Occupancy for the Real Property;

(xiii) an Amendment to the Confidentiality Agreement, duly executed by Seller;

(xiv) a certificate executed by a duly authorized officer of Seller certifying that (i) each of the representations and warranties of Seller set forth in Article 5 was true and correct in all material respects as of the Effective Date and as of the Closing Date, and (ii) all of the terms, covenants and conditions of this Agreement to be complied with and performed by Seller, at or prior to the Closing have been duly complied with and performed in all material respects; and

(xv) a certificate of the Secretary of Seller, in form and substance reasonably satisfactory to Buyer, as to the authenticity and effectiveness of the actions of the board of directors of Seller authorizing this Agreement and the transactions contemplated in this Agreement; and identifying the name and title and bearing the signatures of the Persons authorized by Seller to execute and deliver this Agreement and the other Agreements and instruments contemplated hereby;

(xvi) a certificate of good standing of Seller, also attesting to payment of all applicable taxes by Seller, issued by the Secretaries of State of the States of Delaware and Minnesota, dated within [****]* of the Closing;

(xvii) possession of the Facilities in the condition required by this Agreement, and the keys and/or electronic access cards and security codes therefor; and

(xviii) any other documents required by this Agreement to be delivered by Seller or as may be deemed necessary by Buyer's counsel or the Title Company to effect the transactions contemplated by this Agreement.

(b) Deliveries by Buyer at Closing. The sale of the Assets by Seller in accordance with the terms of this Agreement are subject to Buyer's delivery to Seller (unless noted otherwise) at the Closing of the following instruments, agreements and certificates:

(i) the Purchase Price, as adjusted for prorations as provided herein.

(ii) the Lease Assignment and Assumption Agreement, duly executed by Buyer;

(iii) the Assignment and Assumption Agreement, duly executed by Buyer;

(iv) the Transition Services Agreement, duly executed by Buyer;

(v) an Amendment to the Confidentiality Agreement, duly executed by Buyer;

(vi) a Certificate of Real Estate Value as required by MSA §272.115 executed by Buyer;

(vii) a certificate executed by a duly authorized officer of Buyer certifying that (i) each of the representations and warranties of Buyer set forth in Article 6 was true and correct in all material respects as of the Effective Date and as of the Closing Date, and (ii) all of the terms, covenants and conditions of this Agreement to be complied with and performed by Buyer, at or prior to the Closing have been duly complied with and performed in all material respects;

(viii) a certificate of the Secretary of Buyer, in form and substance reasonably satisfactory to Seller, as to the authenticity and effectiveness of the actions of the board of directors (and shareholders, if applicable) of Buyer authorizing this Agreement and the transactions contemplated in this Agreement; and identifying the name and title and bearing the signatures of the Persons authorized by Buyer to execute and deliver this Agreement and the other Agreements and instruments contemplated hereby;

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(ix) any funds required by the Settlement Statement which are not appropriately an adjustment to the Purchase Price; and

(x) any other document required by this Agreement to be delivered by Buyer or as may be deemed necessary by Seller's counsel or the Title Company to effect the transactions contemplated by this Agreement.

4.3 Prorations. The following are to be apportioned as of the Closing Date:

(a) Utility Charges. Buyer shall set up new utility accounts (telephone, steam, electricity, gas) and arrange for existing utilities to be switched over to such accounts as of the Closing Date. Seller shall pay all charges for utilities used through the date prior to the Closing Date. Upon confirmation from each utility that such deposits are assignable to Buyer, Buyer will pay to Seller at Closing the amount of any utility deposit(s) made by Seller, and Seller will assign to Buyer all of its right, title and interest in and to the applicable deposit(s) relating thereto. Buyer will be responsible for the cost of all utilities used on or after the Closing Date.

(b) Lease Payments and Security Deposits. Amounts for all rents due or paid under the Leases shall be apportioned as of the Closing Date. Upon the confirmation from each Lessor under the Leases that it is holding a security deposit, Buyer will pay to Seller at Closing the amount of any such security deposit(s) made by Seller, and Seller will assign to Buyer all of its right, title and interest in an to any such security deposit(s).

(c) Other Apportionments. Amounts payable under the Assumed Contracts, payments actually made to Seller under the Note, annual or periodic permit and/or inspection fees with respect to Governmental Authorizations that are assignable and, in fact, assigned to Buyer at the Closing, fuel oil, if any, at the most recent cost thereof on the basis of a reading performed by the supplier thereof on the day preceding the Closing and amounts for Property operation and maintenance expenses and other recurring costs to be assumed by Buyer and prepaid by Seller will be apportioned as of the Closing Date.

(d) Title Insurance. Buyer shall pay the premium for title insurance and the Title Company charges for the examination of title to the Real Property and direct administrative closing costs.

(e) Survey. [****]* shall pay the cost up to a [****]* of obtaining the Current Survey, which shall be certified to [****]* and the Title Company.

(f) Recording; Other. [****]* shall pay the costs of recording the Limited Warranty Deed and all applicable real estate transfer taxes imposed by any Governmental Entity, including without limitation, the state deed tax. Payment of all other costs incurred in connection with the transfer of the Real Property contemplated by this Agreement shall be [****]* in accordance with the custom of commercial real estate transactions consummated in Hennepin County, as reasonably determined by the Title Company.

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CONFIDENTIAL TREATMENT REQUESTED

(g) Real Estate Taxes and Special Assessments. General real estate taxes and personal property taxes which were or should have been due and payable in all calendar years ending prior to the Closing Date will be paid by Seller and shall remain the responsibility of Seller. General real estate taxes and personal property taxes due and payable in the calendar year in which the Closing Date occurs will be prorated by Seller and Buyer on a calendar year basis as of the Closing Date, with the Seller being responsible for the period up to and including the Closing Date. General real estate taxes and personal property taxes due and payable in all calendar years commencing after the Closing Date will be paid by Buyer. All special assessments levied or constituting a lien against the Real Property as of the Closing Date will be paid [****]*. Buyer shall assume the obligation to pay any special assessments levied subsequent to the Closing Date.

(h) Settlement Statement. Title Company shall prepare a preliminary Closing settlement statement and shall deliver such statement to Buyer and Seller for approval no less than [****]* prior to the Closing Date (as approved, the "Settlement Statement"). Upon Closing, the Title Company shall disburse funds in accordance with the approved Settlement Statement.

(i) Post-Closing Reconciliation. Seller and Buyer hereby agree that if the Closing shall occur before a new real estate tax rate is fixed or for any other reason any of the foregoing prorations cannot be calculated accurately as of the Closing Date, then the same shall be estimated (based on current information then known, such as the most recent tax rate applied to the latest assessed valuation) for the purposes of Closing and within [****]* after the Closing Date, or as soon as sufficient information is available to permit the parties to effectively calculate such prorations, either party owing the other party a sum of money based on such subsequent calculations shall pay such sum to the other party within [****]* after such calculations.

(j) Survival. The provisions of this Section 4.3 shall survive [****]*.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the exceptions and disclosures listed in the Schedules attached to this Agreement (which modify, vary and qualify certain of the representations and warranties contained in this Article 5), Seller represents and warrants to Buyer as of the Effective Date as follows:

5.1 Organization and Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority to execute and consummate this Agreement, and such other instruments, agreements and transactions as may be contemplated hereunder and thereunder. Seller has all requisite corporate power and authority and all authorizations, licenses, permits and certifications necessary to carry on the Operations as now being conducted and to own, lease and operate the Assets. Seller is qualified as a foreign corporation to do business in every jurisdiction in which the nature of its business or its ownership of property requires it to be qualified and in which the failure to be so qualified would have a Material Adverse Effect. All corporate acts and other proceedings required to be taken by or on the part of Seller to authorize Seller to execute, deliver

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CONFIDENTIAL TREATMENT REQUESTED

and perform this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder or to consummate the Contemplated Transactions, have been duly and properly taken. Seller is not required to obtain stockholder consent (i) to authorize Seller to execute, deliver and perform this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder or (ii) to consummate the Contemplated Transactions. This Agreement has been duly executed and delivered by Seller and constitutes legal, valid and binding obligations of Seller enforceable in accordance with its terms, except as such enforceability may be subject to or limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally and (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in law or equity.

5.2 No Violation or Conflict. The execution and delivery by Seller of this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, and the consummation by Seller of the Contemplated Transactions will not (i) violate any judgment, order, writ, injunction or decree of any Governmental Entity or, to Seller's Knowledge, law, statute, rule or regulation or applicable to Seller, or (ii) conflict with, result in any breach of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under the Certificate of Incorporation or bylaws of Seller or any agreement to which Seller is a party, except for such violations, conflicts, breaches or defaults which individually or in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect on Seller.

5.3 Consents and Approvals. Except as set forth in Schedule 5.3, no notice to, declaration, filing or registration with, or authorization, consent or approval of, or permit from, any Governmental Entity, or any other Person, is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions, except with respect to the HSR Filing and any declarations, filings, registrations, authorizations, consents, approvals or permits which if not obtained or made have not had and would not reasonably be expected to have individually or in the aggregate a Material Adverse Effect on Seller or materially interfere with Buyer's performance of its obligations under the Clinical Drug Substance Supply Agreement or the Transition Services Agreement.

5.4 Assumed Contracts.

(a) Seller has made available to Buyer true, complete and correct copies of all contracts material to the Operations and the Assets (excluding contracts related solely to the manufacture of specific products of Seller), including, without limitation, the Assumed Contracts. Except as set forth in Schedule 5.4(a), all the Assumed Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms by and against Seller, except as such enforceability may be subject to or limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally; and (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in law or equity.

(b) Schedule 5.4(b) sets forth a list of the Leases and all Assumed Contracts which require the consent or waiver of any party to the assignment of such Assumed Contract as a result of the Contemplated Transactions (the "Third Party Consents") and, except as set forth in Schedule 5.4(b), all the Assumed Contracts are fully assignable by Seller and will be assigned to Buyer at the Closing.

(c) Except as set forth in Schedule 5.4(c):

(i) Seller is, and at all times since January 1, 2004, has been, in compliance with all applicable terms and requirements of each Lease, the Development Agreement and the Minimum Assessment Agreement;

(ii) each other Person that has or had any obligation or Liability under any Lease, the Development Agreement or the Minimum Assessment Agreement, is, and at all times since January 1, 2004, has been, in full compliance with all applicable terms and requirements of such Lease, the Development Agreement and the Minimum Assessment Agreement;

(iii) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a breach of, or give Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Lease;

(iv) no event has occurred or circumstance exists under or by virtue of any Seller Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets; and

(v) Seller has not given to or received from any other Person, at any time since January 1, 2004, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or breach of, or default under, any Lease, the Development Agreement and the Minimum Assessment Agreement.

(d) Seller is in material compliance with all applicable terms and requirements of each Assumed Contract and no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a breach of, or give Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify any of the Assumed Contracts. There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable by Seller under current or completed Assumed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

5.5 Compliance with Legal Requirements; Governmental Authorizations.

(a) Except as set forth in Schedule 5.5(a):

(i) Seller is, and at all times since January 1, 2002, has been, in material compliance with each Legal Requirement (other than Legal Requirements with respect

to Environmental Laws) that is or was applicable to the Operations or the ownership or use of any of the Assets;

(ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Legal Requirement with respect to the Assets or the Operations (other than Legal Requirements with respect to Environmental Laws) or (B) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature with respect to the Assets or the Operations (other than any Governmental Remediation Obligation); and

(iii) Seller has not received, at any time since January 1, 2002, any notice or other communication (whether oral or written) from any Governmental Entity or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement with respect to the Assets or the Operations (other than Legal Requirements with respect to Environmental Laws) or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature with respect to the Assets or the Operations (other than any Governmental Remediation Obligation).

(b) Schedule 5.5(b) contains a complete and accurate list of each Governmental Authorization that is held by Seller or relating to the Operations or the Assets. Each Governmental Authorization listed or required to be listed in Schedule 5.5(b) is valid and in full force and effect. Except as set forth in Schedule 5.5(b):

(i) Each such Governmental Authorization is transferable to Buyer and Seller is, and at all times since January 1, 2002, has been, in material compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 5.5(b);

(ii) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Schedule 5.5(b) or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Schedule 5.5(b);

(iii) Seller has not received, at any time since January 1, 2002, any notice or other communication (whether oral or written) from any Governmental Entity or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Schedule 5.5(b) or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization listed or required to be listed in Schedule 5.5(b); and

(iv) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Schedule 5.5(b) have been duly

filed on a timely basis with the appropriate Governmental Entities, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Entities.

To Seller's Knowledge, the Governmental Authorizations listed in Schedule 5.5(b) collectively constitute all of the Governmental Authorizations necessary to permit Seller to lawfully conduct the Operations in the manner in which it currently conducts such Operations and to permit Seller to own and use the Assets in the manner in which it currently owns and uses the Assets and to permit Buyer to perform its obligations under the Clinical Drug Substance Supply Agreement and the Transition Services Agreement.

5.6 Legal Proceedings; Orders.

(a) Except as set forth in Schedule 5.6(a), there is no pending or, to Seller's Knowledge, threatened Proceeding:

(i) by or against Seller or that otherwise relates to or may affect the Operations of, or any of the Assets owned or used by, Seller; or

(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions.

To Seller's Knowledge, no event has occurred or circumstance exists that could reasonably be likely to give rise to or serve as a basis for the commencement of any such Proceeding. Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Schedule 5.6(a).

(b) Except as set forth in Schedule 5.6(b):

(i) there is no Order, nor in the past has there been any Order, to which Seller, the Operations or any of the Assets is subject; and

(ii) no manager, officer, director, agent or employee of Seller is subject to any Order that prohibits such manager, officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Operations of Seller.

5.7 Environmental Matters. Except as described in Schedule 5.7:

(a) To Seller's Knowledge, Seller is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law. Seller has no basis to expect, nor has any other Person for whose conduct it is or may be held to be responsible received, any actual or threatened Order, notice or other communication from (i) any Governmental Entity or private citizen acting in the public interest or (ii) any prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any Environmental Remediation Obligation with respect to the Facilities or other property or asset at or to which Hazardous Substances were transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or, to Seller's Knowledge, threatened claims, Encumbrances, or other restrictions of any nature arising under or pursuant to any Environmental Law with respect to the Facilities.

(c) Seller does not have any Knowledge of or any basis to expect, nor has Seller received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Substances or any alleged, actual, or potential violation or failure to comply with any Environmental Law or of any alleged, actual, or potential obligation to undertake or bear the cost of any Liabilities with respect to the Facilities or any other property to which Hazardous Substances were transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) Seller is not responsible for any Environmental Remediation Obligation with respect to any property geologically or hydrologically adjoining the Facilities.

(e) To Seller's Knowledge, there are no Hazardous Substances present on or in the Environment at the Facilities or any property geologically or hydrologically adjoining the Facilities which have not been remediated except for any residual contamination related to remediation approved by the Minnesota Pollution Control Agency.

5.8 Title to Assets; Real Property, Equipment and Supplies.

(a) Schedule 5.8(a) sets forth a description of all Tangible Personal Property. Except as set forth on Schedule 5.8(a), Seller has good, valid and marketable title to all the Assets other than the Real Property free and clear of all Encumbrances and Seller warrants that, at the Closing, all the Assets other than the Real Property shall be free and clear of all Encumbrances, and Seller shall sell, assign, transfer, convey and deliver good, valid and marketable title to the Assets other than the Real Property at Closing, free and clear of any and all, Encumbrances. Except as set forth in Schedule 5.8(a), Seller beneficially owns all of the right, title or other interests to be transferred to Buyer hereunder with respect to all the Assets, and none of the Assets other than Leased Properties is leased, rented, licensed, or otherwise not owned by Seller.

(b) Seller has not received any written notice that remains uncured from any Governmental Entity alleging that any part of the Real Property is in violation of any zoning, building, health, fire, environmental or other similar statute, ordinance, regulation or code. Seller has not received any written notice of any pending or threatened (and, to Seller's Knowledge, there are no threatened) eminent domain, condemnation or other governmental taking of the Real Property or any part thereof. Seller has not received written notice from its insurance carriers, lenders, any board of fire underwriters or any Governmental Entity that any repairs, replacements or alterations are required to be made to the Real Property which have not been made.

(c) Other than this Agreement, Seller has not entered into any purchase contracts, options or any other agreements of any kind, written or oral, formal or informal, choate or inchoate, recorded or unrecorded, whereby any Person other than Buyer has acquired, or has any basis to assert, any right to purchase or acquire an interest in, lease, sublease, license

or otherwise use or occupy the Real Property or any of the Facilities. There are no parties in possession of any portion of the Real Property or any of the Facilities other than Seller.

(d) Schedule 5.8(d)(i) contains a legal description of the Real Property. Except as set forth in Schedule 5.8(d)(ii), Seller represents, but does not warrant, to Seller's Knowledge that (i) Seller has good, valid and marketable title to all the Real Property free and clear of all Encumbrances other than Encumbrances shown on the Title Report; and (ii) no part of any improvement or structure located on the Real Property encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other improvements situated on adjoining property which encroach on any part of the Real Property. True copies of any current surveys, abstract, title commitments and title opinions in Seller's possession and all policies of title insurance currently in force and in the possession of Seller with respect to the Real Property have been made available to Buyer.

(e) Other than the Leases, there are no other material real property leases under which Seller is a lessee or lessor and that relate to the Assets. The Leases are in full force and effect and have not been modified or amended. All rents and sums payable by Seller under the Leases are currently paid and shall be current at Closing, and Seller has no notice of any default or threatened default by Seller or any lessor under the Leases. There is no action or proceeding instituted against Seller by any lessor presently pending in any court, no security deposits other than those set forth in the Leases, and to Seller's Knowledge, no leasing commissions are due or owing with respect to the Leases.

(f) Seller has delivered to Buyer true, correct and complete copies of Seller's Records and the Environmental Governmental Authorizations. To Seller's Knowledge, no Proceeding has been commenced regarding the Facilities since January 1, 2002.

5.9 Sufficiency of Assets. Except as set forth in Schedule 5.9, the Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to conduct the Operations in the manner presently conducted by Seller other than information technology assets located in and operated out of Seller's Redwood City, California offices and (b) include all of the operating assets of Seller (i) used to conduct the Operations and located at the Facilities other than the Excluded Assets and (ii) necessary to permit Buyer to perform its obligations under the Clinical Drug Substance Supply Agreement and the Transition Services Agreement.

5.10 Condition of Tangible Personal Property. Each item of Tangible Personal Property is in good repair and good operating condition, ordinary wear and tear excepted, is suitable for immediate use in the Ordinary Course of Business. No item of Tangible Personal Property is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. Except as disclosed in Schedule 5.10, all Tangible Personal Property used in the Operations is owned by and in the possession of Seller.

5.11 Supplies. All items included in the Supplies consist of a quality and quantity usable in the Ordinary Course of Business of Seller. Supplies now on hand were purchased in the Ordinary Course of Business of Seller. The quantities of each item of Supplies (whether raw

materials, supplies or work-in-process) are not excessive but are reasonable in the present circumstances of Seller and the Operations.

5.12 Trade Secrets. Seller is the owner or licensee of all right, title and interest in and to each of the Trade Secrets, free and clear of all Encumbrances, and has the right to use without payment to a third party all of the Trade Secrets and to assign them to Buyer at the Closing. Except as set forth in Schedule 5.12, all former and current employees of Seller employed with respect to the Operations have executed written Contracts with Seller that assign to Seller all rights to any inventions, improvements, discoveries or information relating to the Operations. Seller has taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets (including the enforcement by Seller of a policy requiring each Employee or contractor to execute proprietary information and confidentiality agreements substantially in Seller's standard form, and all current and former Employees and contractors of Seller have executed such an agreement). No Trade Secrets were developed, in whole or in part, with full- or partial-funding from a Governmental Entity, including, without limitation, to the United States Government, or any agency thereof or in efforts with other entities receiving full or partial-funding from a Governmental Entity or any agency thereof.

5.13 Brokers and Finders. Except as set forth in Schedule 5.13, Seller has not employed any broker or finder or incurred any Liability for any brokerage fee, commission, finder's fee or other compensation in connection with the transactions contemplated by this Agreement.

5.14 No Implied Warranty. THE REPRESENTATIONS AND WARRANTIES GIVEN HEREIN BY SELLER ARE IN LIEU OF ANY IMPLIED WARRANTIES WHICH MAY OTHERWISE BE APPLICABLE BECAUSE OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER STATUTE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THOSE COVENANTS, REPRESENTATIONS AND WARRANTIES THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT EXECUTED AND DELIVERED BY SELLER IN CONNECTION WITH THE CLOSING, SELLER MAKES, AND HAS MADE, NO (AND BUYER ACKNOWLEDGES THAT NO ONE ACTING OR PURPORTING TO ACT ON SELLER'S BEHALF, INCLUDING, WITHOUT LIMITATION, BROKER, HAS MADE, OR MAKES, ANY) COVENANT, REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) AS TO ANY ASPECT WHATSOEVER OF OR RELATING TO THE FACILITIES OR SELLER'S RECORDS, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY OF THE FACILITIES OR AS TO THE PHYSICAL CONDITION THEREOF FOR ANY PURPOSE WHATSOEVER.

5.15 Condition of Facilities.

(a) To Seller's Knowledge, use of the Facilities for the various purposes for which it is presently being used is permitted as of right under all applicable zoning legal requirements and is not subject to "permitted nonconforming" use or structure classifications. To Seller's Knowledge, the Facilities located on the Real Property are in compliance with all applicable Legal Requirements, including those pertaining to zoning, building and the disabled,

are in good repair and in good condition, ordinary wear and tear excepted. The Facilities located on the Real Property have direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the Real Property, are supplied with public or quasi-public utilities and other services appropriate for the operation of the Facilities located thereon and are not located within any flood plain or area subject to wetlands regulation or any similar restriction. To Seller's Knowledge, there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain or other condemnation proceeding that would result in the taking of all or any part of any Facilities or that would prevent or hinder the continued use of any of the Facilities as heretofore used in the conduct of the Operations or the performance of Buyer's obligations under the Clinical Drug Substance Supply Agreement or the Transition Services Agreement.

(b) Seller has not received written notice that Seller's use or occupancy of the Facilities violates any Legal Requirement, covenant, condition or restriction that encumbers any of the Facilities, or that any of the Facilities is subject to any restriction for which any authorization or certification of any Governmental Entity necessary to the current use thereof have not been obtained.

5.16 Disclosure. No representation or warranty or other statement made by Seller in this Agreement or otherwise in connection with the Contemplated Transactions contains any untrue statement of a material fact or omits to state a material fact necessary to make any of them, in light of the

circumstances in which it was made, not misleading.

5.17 Product Liability. Seller does not have any Liability (and, to Seller's Knowledge, there is no basis for any present or future Proceeding against it giving rise to any Liability) arising out of any injury to individuals or property as a result of the ownership, possession or use of the Assets or the Operations.

5.18 Suppliers. Except as disclosed in Schedule 5.18, Seller is not or has not been engaged in any material dispute with any of its Suppliers. Seller has not received any actual notice or has any reason to believe that any of its Suppliers will not sell to Buyer services, products, equipment or goods after the Closing Date on terms and conditions substantially similar to those currently in effect, subject only to general and customary price increases. Seller has adequate sources of supply for its business as now and proposed to be conducted. Except as disclosed in Schedule 5.18, Seller is not dependent on a supplier that is the sole supplier of any goods and services it requires to operate the Assets.

5.19 Employees. Schedule 5.19 contains a complete and accurate list of the names, titles, current annual base salary and target annual bonus of each of Seller's employees at the Facilities employed as of the Effective Date (each, an "Operations Employee"), including a complete and accurate list of all employment agreements, letters or other agreements (including noncompetition agreements) with respect to the Operations Employees. Each Operations Employee is currently employed by, and has not entered into any severance or termination agreement with, Seller. No Operations Employee has accepted an agreement (whether or not in writing) with Seller to continue or to commence employment with Seller following the Closing. No Operations Employee is currently engaged in negotiations intended or likely to result in employment with Seller to continue or to commence employment with Seller following Closing.

To Seller's Knowledge, the Operations Employees are not debarred or suspended under 21 U.S.C. §335a(a) or (b).

5.20 Insurance. Seller has not been refused any fire, liability, product liability, workmen's compensation, health or other forms of insurance, including performance bonds with respect to any aspect of the Operations or the ownership or use of the Assets or, since January 1, 2002, has had any claims denied by its insurers. There are no pending claims against Seller with respect to any aspect of the Operations or the ownership or use of the Assets as to which insurers are defending under a reservation of rights or have denied liability and, to Seller's Knowledge, no condition exists or events have occurred since January 1, 2002 which could reasonably be expected to result in any such claim.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF BUYER

6.1 Organization and Authority. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has full corporate power and authority to execute and deliver this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, and to perform its obligations hereunder and thereunder. All corporate acts and other proceedings required to be taken by or on the part of Buyer to authorize Buyer to execute, deliver and perform this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder, have been duly and properly taken. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be subject to or limited by (i) applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally and (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in law or equity, regardless of whether considered in a proceeding in law or equity.

6.2 No Conflict or Violation. The execution and delivery by Buyer of this Agreement and such other instruments, agreements and transactions as may be contemplated hereunder and the consummation by Buyer of the Contemplated Transactions will not (i) to Buyer's Knowledge, violate any law, statute, rule or regulation or judgment, order, writ, injunction or decree of any Governmental Entity, or (ii) conflict with, result in any breach of, or constitute a default (or an event which with notice or lapse of time or both would become a default) under the Certificate of Incorporation or bylaws of Buyer or, to Buyer's Knowledge, any agreement to which Buyer is a party, except for such violations, conflicts, breaches or defaults which individually or in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect on Buyer.

6.3 Consents and Approvals. No notice to, declaration, filing or registration with, or authorization, consent or approval of, or permit from, any Governmental Entity, or any other Person, is required to be made or obtained by Buyer in connection with the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions, except with respect to the HSR Filing and the Environmental Governmental Authorizations listed

in Schedule 6.3, except for declarations, filings, registrations, authorizations, consents, approvals or permits which if not obtained or made have not had and would not reasonably be expected to have individually or in the aggregate a Material Adverse Effect on Buyer.

6.4 Cash Resources. Buyer has cash and/or readily available financing in an amount sufficient to pay the Purchase Price at the Closing and any and all fees and expenses relating to the transactions contemplated under this Agreement and specifically acknowledges Seller has entered into this Agreement in reliance upon this representation. Buyer acknowledges that obtaining financing shall not be a condition to Closing.

6.5 Seller's Records. Buyer acknowledges that Seller has heretofore delivered to Buyer (or has made available to Buyer for review and copying) copies of Seller's Records.

6.6 Environmental Governmental Authorizations. Buyer acknowledges that Seller has previously delivered, or made available, to Buyer copies of certain Environmental Governmental Authorizations.

6.7 Litigation. There are no actions, suits, proceedings or claims pending or, to the Knowledge of Buyer, threatened in writing concerning Buyer or any of its Affiliates with respect to the transactions contemplated in this Agreement.

6.8 Brokers and Finders. Except as set forth in Schedule 6.8, Buyer has not employed any broker or finder or incurred any Liability for any brokerage fee, commission or finder's fee in connection with the transactions contemplated by this Agreement.

6.9 Buyer Due Diligence. Buyer is experienced, and/or has engaged expert advisors experienced in the evaluation and purchase of property and assets such as the Assets contemplated hereunder. Buyer acknowledges that prior to Closing it will have had the opportunity, pursuant to Section 7.5, to inspect the Facilities and observe the physical characteristics and condition of the Facilities and any and all other matters, as to, concerning or with respect to any matter whatsoever relating to the Facilities or this Agreement or of concern to Buyer ("Property Condition"), including: title; the environmental condition of the Facilities (including the presence or absence of Hazardous Substances in, on or about the Facilities, notwithstanding the issuance of letters of closure, no further action or liability assurance by the various federal, state or local agencies and offices); water, soil, pest and geological conditions of the Facilities the financial condition of the Facilities; the suitability of the Facilities or any and all activities and/or uses which may be conducted thereon; the compliance of or by the Facilities with any and all laws, rules, ordinances or regulations of any applicable governmental authority or body (including environmental, building codes, and the status of any development or use rights respecting the Facilities); the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Facilities; or the physical condition of the improvements, including construction defects, deferred maintenance or other adverse physical conditions or defects. Buyer further acknowledges and agrees that except for any representations, warranties or agreement made by Seller herein, neither Seller nor any Person acting or purporting to act on Seller's behalf has made any representation, warranty or agreement, express or implied, by or on behalf of Seller as to any matters concerning a Property Condition. Buyer hereby acknowledges, agrees and represents that, except as otherwise provided in this Agreement, the Facilities are to

be purchased, conveyed and accepted by Buyer at the Closing in their present condition, "AS IS", "WHERE IS" AND WITH ALL FAULTS, and that no patent or latent defect or deficiency in a Property Condition, whether or not known or discovered (other than the fraud of Seller), shall affect the rights of either Seller or Buyer hereunder, nor shall the Purchase Price be reduced as a consequence thereof. Upon Closing, except as otherwise provided in this Agreement, Buyer will acquire the Facilities solely on the basis of its own physical and financial examinations, review and inspections and the title insurance protection afforded by the owner's title policy. Upon Closing, Buyer shall assume the risk that Property Conditions may not have been revealed by Buyer's investigations.

ARTICLE 7
PRE-CLOSING COVENANTS

7.1 Governmental Filings. Buyer and Seller shall cooperate in promptly undertaking all filings required to be filed with any Governmental Entity in connection with the transfer of Assets and other rights under this Agreement and to cooperate with one another as reasonably necessary to accomplish the foregoing, including, but not limited to, the filings required of both parties pursuant to the HSR (such filings sometimes being referred to in this Agreement as the "HSR Filings"), and the filing of any additional information as required with respect to such HSR Filings as soon as practicable after receipt of request therefor from the United States Federal Trade Commission. The filing fees associated with all HSR Filings shall be [****]*.

7.2 Conduct of Operations. During the period on and from the Effective Date through and including the Closing Date, Seller shall maintain the Facilities in substantially the same condition as exist as of the Effective Date, maintain the same insurance coverages on the Facilities currently in effect and operate the Assets in a manner reasonably determined in Seller's discretion as prudent to prevent damage to, or deterioration of, the Facilities and to comply in all material respects with applicable legal requirements and all applicable permits and approvals.

7.3 Obtaining Necessary Consents and Lease Extensions. Seller shall use its commercially reasonable efforts to obtain any and all consents necessary for the effective assignment to and assumption by Buyer of the Assumed Contracts and Assumed Liabilities, including the Third Party Consents and the consents set forth on Schedule 5.3. Further, Seller agrees not to (i) terminate the employment or reduce the salary on other benefits of any Operations Employee or remove any Tangible Personal Property included in the Assets from any of the Facilities prior to the Closing without the prior written consent of Buyer except for immaterial quantities of supplies in the ordinary course of Business, except as otherwise required pursuant to Section 7.8(c), or (ii) to modify or amend any Assumed Contracts or enter into any new contracts unless the same is terminable without penalty by Seller and by Buyer upon not more than thirty (30) days' notice. Buyer shall cooperate with Seller to obtain Third Party Consents for the assignment and assumption of the Leased Properties. In addition, Buyer and Seller shall use commercially reasonable efforts to cause St. Paul Properties, Inc., as landlord under the 3750 Lease and the 3850 Lease, to [****]*. Buyer and Seller shall use commercially reasonable efforts to amend each Lease and that certain Lease Agreement between St. Paul Properties, Inc.,

* Certain information on this page has been omitted and filed separately with the SEC. Confidential treatment has been requested with respect to the omitted portions.

as landlord, and Seller, as tenant, dated February 10, 1992, as amended (the "Retained Lease"), to [****]*. All such consents shall be in writing and executed counterparts thereof shall be delivered promptly to Buyer. To the extent (x) Buyer wishes to pursue a transfer of any of the Environmental Governmental Authorizations, and (y) such Environmental Governmental Authorizations are transferable, then Seller shall reasonably cooperate with, and assist Buyer in

effectuating such transfer, including the filing of any forms with the relevant Governmental Entity that may be necessary to secure approval of such transfer by such Governmental Entity.

7.4 No Solicitation. Seller will not (and it will cause its officers, directors, employees, agents and Affiliates not to) (a) take any action to solicit, initiate, seek, or affirmatively support any inquiry, proposal or offer from, any corporation, partnership, Person or group (other than Buyer) relating to any acquisition of the Assets, (any such proposed transaction being a "Third Party Acquisition"); or (b) participate in any discussions or negotiations with, or provide any non-public information to, any corporation, partnership, Person or group (other than Buyer) relating to any proposed Third Party Acquisition. In no event will Seller accept or enter into an agreement concerning any such Third Party Acquisition prior to the termination of this Agreement pursuant to Article 11. Notwithstanding this provision, nothing herein shall be deemed to in any way restrict or limit the right of Seller to engage in discussions, negotiations, furnishing of information or any other activities relating to or in support of transactions involving the acquisition or sale of Seller and/or any other product lines or businesses of Seller other than the Assets, so long as this Agreement shall remain in full force and effect and shall remain binding on the parties hereto.

7.5 Access. During the period from the Effective Date and continuing until the Closing, upon reasonable advance notice received from Buyer and at Buyer's expense, Seller shall (i) afford Buyer and its representatives reasonable access to the Facilities, during regular business hours, for the purposes of making, at Buyer's expense, (A) engineering, architectural, title, zoning, survey, and other similar studies that Buyer reasonably deems necessary or desirable in connection with the transaction contemplated hereby (the "Real Property Inspections") and (B) environmental investigations, assessments or studies of the Real Property and all related reports and correspondence (the "Environmental Inspections"), and (ii) otherwise cooperate and assist with Buyer's investigation of the Assets as Buyer may reasonably request. Buyer shall coordinate with Seller to minimize any interference with the operations of Seller that may be caused by any Real Property Inspection and Environmental Inspection. Buyer will obtain (or ensure that its agents, consultants and contractors, as applicable, will obtain) public liability and property damage insurance insuring against any liability arising out of any entry, tests or investigations of the Property pursuant to the provisions hereof. Buyer will provide to Seller, upon request, a certificate of insurance evidencing Buyer's or Buyer's agents', consultants' and/or contractors', as applicable, procurement of a commercial general liability insurance policy as required herein prior to or simultaneous with their conducting any physical inspection of the Facilities. Such insurance shall be in the amount of [****]* combined single limit for injury to or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence. The aforementioned insurance coverage may

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CONFIDENTIAL TREATMENT REQUESTED

be obtained under a blanket policy carried by Buyer or its agents, consultants or contractors, as the case may be. In conducting any inspections, investigations or tests of the Property, Buyer and its agents and representatives shall: (i) not unreasonably interfere with the operation and maintenance of the Property; (ii) not perform any invasive or destructive testing or sampling and not otherwise damage any part of the Property or any personal property; (iii) not injure Seller or its agents, guests, invitees, contractors or employees; (iv) comply with all applicable laws; (v) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (vi) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; (vii) repair any damage to the Property resulting directly or indirectly from any such inspection or tests; (viii) not reveal or disclose prior to Closing any information obtained by Buyer prior to Closing concerning the Property or documents related thereto, except as may be otherwise required by law, and (ix) not cause the Release of any Hazardous Substance discovered through any such inspection nor exacerbate any existing Release of Hazardous Substance discovered through such inspection. Buyer shall afford Seller the opportunity to have a representative of Seller present to accompany the parties undertaking such evaluations, inspections, tests and other investigations of the physical condition of the Property. If this Agreement is terminated, Buyer shall restore the Property to the condition in which it was found by Buyer. Buyer's obligation to restore the Property shall survive any termination of this Agreement.

7.6 Title Insurance. Schedule 5.8(d)(i) sets forth a description of the Real Property. Buyer has ordered from the Title Company a title insurance search and commitment for a title insurance policy (the "Title Commitment"), setting forth the status of title to the Real Property and any defects in or exceptions or objections to title ("Title Exceptions"). No later than ten (10) business days after Buyer's receipt of the Survey and Title Commitment, Buyer shall notify Seller of any Title Exceptions disclosed by the Title Commitment (or the Current Survey) which are not Permitted Encumbrances and are objectionable to Buyer ("Title Objections"). Each Title Exception not objected to shall be deemed a Permitted Encumbrance. Upon receipt of a Title Objection, Seller may notify Buyer by written notice (the "Response Notice"), not later than five (5) business days after receipt of the Title Objection (the "Cure Notice Deadline") that either (i) Seller agrees to cure, at Seller's expense, all Title Objections prior to Closing, or (ii) Seller does not intend to cure such Title Objections. A title defect shall be deemed cured if Title Company deletes reference to the item constituting the title defect as an encumbrance and exception to the Title Company's insurance coverages without additional or special premium. If Seller declines to cure the Title Objections prior to Closing, Buyer may terminate this Agreement by written notice delivered to Seller within five (5) business days after receipt of the Response Notice and Seller shall reimburse Buyer for all of its costs and expenses incurred in connection with the due diligence, the negotiation of the letter of intent between Seller and Buyer dated January 24, 2008 and this Agreement (including the negotiation of all associated agreements and all actions performed as part of this Agreement). Such termination shall be Buyer's sole remedy. If Buyer does not terminate this Agreement, such Title Objections shall be deemed Permitted Encumbrances; provided, however, that if such a Title Objection can be cured by the payment of money only, Buyer's shall have the option at the Closing to deduct from the Purchase Price the amount of money necessary, in the opinion of the Title Company, to cure the Title Objection, which amount may include such other sums as may be deemed necessary of desirable by the Title Company.

CONFIDENTIAL TREATMENT REQUESTED

7.7 Inspections.

(a) Promptly after receipt of any report pertaining to any Real Property Inspection which identifies (i) any failure of the Facilities to comply with any Legal Requirement or (ii) any defect in the physical condition of the Facilities, including construction defects or deferred maintenance, where the cost to correct or cure such defective physical condition could, in the opinion of Buyer's engineering consultants, exceed [****]* (in either case, an "Unsatisfactory Condition"), then, Buyer promptly shall deliver a copy of such report and written notice to Seller (the "Unsatisfactory Inspection Notice") setting forth in reasonable detail conditions and, if available, a good faith estimate of the likely costs to remedy the Unsatisfactory Condition. Upon receipt of an Unsatisfactory Inspection Notice, Seller may notify Buyer by written notice (the "Inspection Response Notice"), not later than five (5) business days after receipt of the Unsatisfactory Inspection Notice (the "Inspection Notice Deadline") that either (i) Seller agrees to cure such conditions prior to the Closing or (ii) Seller does not intend to cure such conditions prior to the Closing. If Seller does not provide an Inspection Response Notice to Buyer by the Inspection Notice Deadline, Seller shall be deemed to have agreed to cure such conditions prior to the Closing. If Seller provides an Inspection Response Notice that Seller does not intend to cure such conditions prior to the Closing, Buyer may notify Seller by written notice, not later than five (5) business days after the Inspection Notice Deadline (the "Buyer Notice Deadline") that Buyer is terminating this Agreement, whereupon Seller shall reimburse Buyer for its costs and expenses incurred in connection with the due diligence, the negotiation of the letter of intent between Seller and Buyer dated January 24, 2008 and this Agreement (including the negotiation of all associated agreements and all actions performed as part of this Agreement). If Buyer does not terminate this Agreement by Buyer Notice Deadline or fails to respond by Buyer Notice Deadline, Buyer shall be deemed to have accepted Seller's response (or deemed response) in the Inspection Response Notice. Effective as of Closing, provided that Seller has effected the cure of all conditions Seller agreed to cure in the Inspection Response Notice, Buyer shall be deemed to have accepted the Real Property "as-is" as of the Closing Date and to have waived and released any claims against Seller with respect thereto except as otherwise provided in this Agreement. Notwithstanding the foregoing, a circumstance or condition which constitutes an Environmental Remediation Obligation under Section 7.7(b) shall not constitute an Unsatisfactory Condition.

(b) Buyer shall use commercially reasonable efforts to obtain a Phase I Environmental Site Assessment of the Facilities promptly, and in all events, prior to the Closing Date. Promptly after receipt of any report pertaining to any Environmental Inspection which identifies any Hazardous Substance that is or is suspected of being located at, on, under or migrating to or from the Real Property that requires or may require remediation under any applicable Environmental Laws (an "Environmental Remediation Obligation"), then, Buyer promptly shall deliver a copy of such report and written notice to Seller (the "Environmental Remediation Obligation Notice") setting forth in reasonable detail the basis for and any evidence of an actual or suspected Environmental Remediation Obligation, and, if available, a good faith estimate of the likely costs associated with such Environmental Remediation (as defined herein) or with any further Environmental Inspections, such as a Phase II Environmental Site

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Assessment, needed to investigate further any suspected Environmental Remediation Obligation(s). Upon receipt of an Environmental Remediation Obligation Notice, Seller may notify Buyer by written notice (the "Environmental Cure Response Notice"), not later than five (5) business days after receipt of the Environmental Remediation Obligation Notice (the "Environmental Cure Notice Deadline") that either (i) Seller agrees to conduct an Environmental Remediation of such Environmental Remediation Obligation and conduct such further Environmental Inspections as may be necessary to determine whether or not each suspected Environmental Remediation Obligation is, in fact, an Environmental Remediation Obligation and, upon the determination of the environmental consultant reasonably acceptable to Buyer performing such further Environmental Inspections that one or more additional Environmental Remediation Obligations exist that Seller agrees to conduct an Environmental Remediation of such additional Environmental Remediation Obligations, or (ii) Seller does not intend to conduct an Environmental Remediation of such Environmental Remediation Obligation or any further Environmental Inspections. If Seller does not provide an Environmental Cure Response Notice to Buyer by the Environmental Cure Notice Deadline, Seller shall be deemed to have agreed to conduct an Environmental Remediation of such Remediation Obligation and to conduct such further Environmental Inspections and, upon the determination of said environmental consultant reasonably that one or more additional Environmental Remediation Obligations exist, to conduct an Environmental Remediation of such additional Environmental Remediation Obligations. If Seller provides an Environmental Cure Response Notice that Seller does not intend to conduct an Environmental Remediation of such Remediation Obligation, Buyer may notify Seller by written notice, not later than five (5) business days after the Environmental Cure Notice Deadline (the "Buyer Termination Deadline") that Buyer is terminating this Agreement, whereupon Seller shall reimburse Buyer for its costs and expenses incurred in connection with the due diligence, the negotiation of the letter in intent between Seller and Buyer dated January 24, 2008 and this Agreement (including the negotiation of all associated agreements and all actions performed as part of the Agreement). If Buyer does not terminate this Agreement by Buyer Termination Deadline or fails to respond by Buyer Termination Deadline, Buyer shall be deemed to have accepted Seller' response (or deemed response) in the Environmental Cure Response Notice. If Seller provides an Environmental Cure Response Notice that Seller intends to conduct an Environmental Remediation of such Remediation Obligation and to conduct such further Environmental Inspections and, upon the determination of said environmental consultant reasonably that one or more additional Environmental Remediation Obligations exist, to conduct an Environmental Remediation of such additional Environmental Remediation Obligations, then Seller and Buyer on or before the Closing Date shall negotiate and enter into a remediation agreement to accomplish the requirements of this Section 7.7(b). Effective as of Closing, Buyer shall be deemed to have accepted all matters requiring Environmental Remediation expressly disclosed in the Environmental Inspection and Seller's Reports, and to have waived and released any claims against Seller with respect thereto except as provided for in this Agreement and the remediation agreement.

7.8 Employees.

(a) Buyer shall have the right prior to Closing to contact and to discuss possible terms of employment with all of the Operations Employees, except the Seller's Retained Employees listed on Schedule 7.8(a). Buyer anticipates offering all or substantially all the Operations Employees the opportunity to become employees of Buyer in positions comparable to

those they currently hold with Seller, effective immediately after the Closing. Buyer shall deliver to Seller a list of the Operations Employees to whom Buyer has or intends to make offers of employment (each, an "Identified Employee") at least fifteen (15) days prior to the date of the Closing.

(b) Other than those Seller's Retained Employees listed on Schedule 7.8(a), Seller shall terminate the employment of all Operations Employees who are offered employment by Buyer, effective immediately prior to the Closing. Seller shall take all action necessary to give any notification required by the Worker Adjustment and Retraining Notification Act ("WARN"), United States Code, title 29, Section 2101 and Section 116L.976 of the Minnesota Statutes Annotated, comply with any requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 and pay any and all severance, vacation, paid time off, unpaid wages, unpaid bonuses, unpaid commissions or other sums that may be due to Operations Employees in connection with their termination of employment with Seller, if any, or otherwise pursuant to the terms of any of Seller's employee benefit plan. Buyer shall provide to Seller in a timely manner any information reasonably necessary to determine whether an Identified Employee has been offered employment in a comparable position and such other information as is reasonably necessary for Seller to comply with its obligations, if any, under WARN or any similar state law, rule or regulation with respect to Seller's termination of the employment of any Operations Employees. Seller will not exercise any right it may have under any agreement between Seller and any Operations Employee to prevent any such Operations Employee from accepting an offer of employment from Buyer or providing services to Buyer, and Seller will not otherwise enforce any restrictive covenants that would adversely effect the employment of or services provided by such Operations Employees on behalf of Buyer. Seller shall not for a period of [****]* after the Closing Date (i) induce, persuade or attempt to induce or persuade any employee, consultant or other personnel of Buyer at the Facilities or any former employee of Seller at the Facilities to reduce, terminate, restrict or otherwise alter his or employment relationship with Buyer; or (ii) solicit, hire, offer to hire, entice away or engage the services of any employee, consultant or other personnel of Buyer at the Facilities or any former employee of Seller at the Facilities.

7.9 Bulk Transfer Laws. Seller shall comply with the provisions of any applicable so-called "bulk transfer law" of any jurisdiction in connection with the sale of the Assets to Buyer.

7.10 Brokers and Finders. Seller agrees to pay to each Person named on Schedule 5.13 a commission pursuant to separate agreement and Buyer agrees to pay to each Person named on Schedule 6.8 a commission pursuant to separate agreement. The provisions of this Section 7.10 shall survive the Closing or other termination of this Agreement.

ARTICLE 8
CONDITIONS TO CLOSING

8.1 Conditions to Obligations of Buyer. All obligations of Buyer hereunder are, at the option of Buyer, subject to the conditions precedent (all or any of which may be waived by Buyer, in whole or in part) that, at the Closing:

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* Certain information on this page has been omitted and filed separately with the SEC. Confidential treatment has been requested with respect to the omitted portions.

(a) The waiting period or periods required under the HSR, if applicable, shall have expired or shall have been terminated.

(b) Seller shall have furnished to Buyer all deliverables set forth in Section 4.2(a), including the Lease Assignment and Assumption Agreement.

(c) The representations and warranties of Seller set forth in Article 5 hereof shall be true and correct in all material respects at and as of the Closing Date as though then made, except that any such representation or warranty made as of a specified date (other than the date hereof) shall only need to have been true on and as of such date.

(d) The [****]*.

(e) The Environmental Governmental Authorizations, if any, necessary in order for Buyer to perform its obligations under the Clinical Drug Substance Supply Agreement and the Transition Services Agreement [and identified as conditions to Closing on Schedule 6.3] shall have been issued in the name of Buyer by the respective Governmental Entity Issuers thereof.

(f) All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

(g) Buyer shall have obtained the Phase I Environmental Site Assessment in accordance with Section 7.7(b) herein.

(h) Buyer shall have obtained a fully enforceable policy of title insurance insuring Buyer's title to the Real Property in accordance with Section 7.6 herein.

8.2 Conditions to Obligations of Seller. All obligations of Seller hereunder are, at the option of Seller, subject to the conditions precedent (all or any of which may be waived by Seller, in whole or in part) that, at the Closing:

(a) The waiting periods required under the HSR, if applicable, shall have expired or shall have been terminated.

(b) Buyer shall have furnished to Seller all deliverables set forth on Section 4.2(b).

(c) The representations and warranties of Buyer set forth in Article 6 hereof shall be true and correct in all material respects at and as of the Closing Date as though then made, except that any such representation or warranty made as of a specified date (other than the date hereof) shall only need to have been true on and as of such date.

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ARTICLE 9
POST-CLOSING COVENANTS

9.1 Further Assurances. The parties agree to execute, acknowledge and deliver such further instruments, and to do all such other reasonable acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement, including those acts necessary or useful to satisfy the Closing conditions specified in Sections 8.1 and 8.2. Each party shall bear its own costs and expenses associated with fulfilling its obligations as set forth in this Article 9, except for such fees as provided for in the Transition Services Agreement.

ARTICLE 10
CONFIDENTIALITY

10.1 Confidentiality. Each party has disclosed, and may hereafter from time to time in the course of the performance of this Agreement disclose, Confidential Information to the other party. Each party shall hold in confidence all Confidential Information of the other party and shall take all reasonable steps to prevent disclosure to, or use of the Confidential Information of the other party by, any third party, except as permitted under this Agreement or as necessary to carry out the activities contemplated hereby. Further, neither party shall, without the prior written consent of the other party, use the Confidential Information of the other party for any purpose other than performing its obligations or exercising its rights under this Agreement or in connection with the Contemplated Transactions. Each party shall disclose the Confidential Information of the other party only to its directors, employees, consultants, vendors and clinicians under written agreements of confidentiality at least as restrictive as those set forth in this Agreement or comparable assurances of confidentiality, who have a need to know such information in connection with such party performing its obligations or exercising its rights under this Agreement or in connection with the Contemplated Transactions. No provision of this Agreement shall be construed so as to preclude such disclosure of Confidential Information as may be inherent in or reasonably necessary to the securing from any Governmental Entity of any necessary approval or license related to the Assets. Upon the termination of this Agreement, and upon the written request of the other party, each party shall promptly return to the other party all copies and embodiments of the Confidential Information of such other party, subject to the retention by each party's legal department of one complete copy for archival purposes and except, with respect to Buyer, to the extent that Buyer has acquired such Confidential Information at Closing pursuant to Section 2.1(i) hereof; which Confidential Information shall, effective as of the Closing, become the Confidential Information of Buyer for all purposes of this Agreement and the Confidentiality Agreement.

10.2 Publicity. No party to this Agreement shall originate any publicity, news release or other public announcement, written or oral, whether relating to this Agreement or the existence of any arrangement between the parties, without the prior written consent of the other party whether named in such publicity, news release or other public announcement or not, except where such publicity, news release or other public announcement is required by law or by the rules or regulations of any stock exchange on which any security of Seller or Buyer is listed for trading ("Stock Exchange"); provided that in such event, the party issuing same shall still be required to consult with the other party whether named in such publicity, news release or public announcement or not, a reasonable time prior to its release to allow the other party to comment

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thereon and, after its release, shall provide the other party with a copy thereof. Each party shall use commercially reasonable efforts to provide reasonable advance notice of and to respond to and cooperate with the other party in connection with any such publicity. If the party whose comments are solicited fails to comment within [****]* days from the initial consultation with respect to any pending disclosure (or such shorter period of time as may be necessary for the party proposing to issue such publicity or its Affiliates to avoid a violation of any applicable Legal Requirement or any rule or regulation of any Stock Exchange). The other party shall be free to issue its publicity, news release or other public announcement. If either party, based on the advice of its counsel, determines that this Agreement, or any of the other documents executed in connection herewith, must be filed with the SEC or any Stock Exchange, then such party, prior to making any such filing, shall provide the other party and its counsel with a redacted version of this Agreement (or any other related documents) which it intends to file, and will give due consideration to any comments provided by the other party or its counsel and use reasonable efforts to ensure the confidential treatment by the SEC or any applicable Stock Exchange of those sections specified by the other party or its counsel.

ARTICLE 11
TERM AND TERMINATION

11.1 Termination. This Agreement may be terminated prior to the Closing:

(a) By Buyer, upon written notice (i) at any time prior to Closing, if Seller shall have failed to comply in any material respect with any of its obligations in this Agreement, and such failure shall be continuing, or pursuant to any other termination right of Buyer set forth specifically in this Agreement, or if any one or more of the representations or warranties of Seller contained in this Agreement shall prove to have been inaccurate in any material respect when made; provided, however, Buyer shall give Seller thirty (30) days to cure any such failure to so comply or to remedy any such inaccuracy under this Agreement; or (ii) at Closing, if any of the conditions precedent to the performance of Buyer's obligations at the Closing under Article 7 or Article 8 shall not have been fulfilled (unless the failure results primarily from Buyer's breach of any representation, warranty, covenant or agreement contained this Agreement); provided, however, that in the event that Buyer shall desire to terminate this Agreement as a result of the failure of the accuracy in any material respect of a representation or warranty at the Closing, Buyer shall be required to give Seller prior notice that it intends to terminate this Agreement as a result of such inaccuracy and Seller shall have a reasonable period of time, not to exceed thirty (30) days, to cure such inaccuracies.

(b) By Seller, upon written notice (i) at any time prior to Closing, if Buyer shall have failed to comply in any material respect with any of its covenants or agreements contained in this Agreement and such failure shall be continuing, or pursuant to any other termination right or Seller

specifically set forth in this Agreement, or if any one or more of the representations or warranties of Buyer contained in this Agreement shall prove to have been inaccurate in any material respect when made; provided, however, Seller shall give Buyer thirty (30) days to cure any such failure to so comply or any such inaccuracy under this Agreement; or

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(ii) at the Closing, if any of the conditions precedent to the performance of its obligations at the Closing under Article 7 or Article 8 shall not have been fulfilled (unless the failure results from Seller's breach of any representation, warranty, covenant or agreement contained this Agreement); provided, however, that in the event that Seller shall desire to terminate this Agreement as a result of the failure of the accuracy in any material respect of a representation or warranty at the Closing, Seller shall be required to give Buyer prior notice that it intends to terminate this Agreement as a result of such inaccuracy and Buyer shall have a reasonable period of time, not to exceed thirty (30) days, to cure such inaccuracies.

(c) By either party if the Closing shall not have occurred on or before April 30, 2008, provided that such date shall be extended to the extent necessary under the circumstances in the event the waiting period under the HSR is extended, restarted or renewed beyond the initial 30-day period, or the Title Commitment and Current Survey have not been received by Buyer and Seller or a dispute exists in connection with any matter described in Section 7.7 hereof, unless such failure to close is primarily the result of the breach of any representations, warranties, covenants or agreements contained in this Agreement by the party seeking to terminate.

11.2 [****]*.

11.3 Consequences of Termination. In the event of termination of this Agreement prior to the Closing in accordance with its terms (rather than for willful breach of this Agreement): (i) each party will redeliver all documents, work papers and other material of any other party relating to the Contemplated Transactions, whether so obtained before or after the Effective Date, to the party furnishing the same; (ii) the provisions of Article 10 shall continue in full force and effect; and (iii) no party hereto shall have any Liability or further obligation to any other party to this Agreement; provided that if this Agreement is terminated pursuant to Section 11.1(a)(i) hereof, Seller shall reimburse Buyer for all of its costs and expenses incurred in connection with the due diligence, the negotiation of the letter of intent between Seller and Buyer dated January 24, 2008 and this Agreement (including the negotiation of all associated agreements and all actions performed as part of this Agreement); provided further that if this Agreement is terminated pursuant to Section 11.1(b)(i) hereof, Buyer shall reimburse Seller for all of its costs and expenses incurred in connection with the due diligence, the negotiation of the letter of intent between Seller and Buyer dated January 24, 2008 and this Agreement (including the negotiation of all associated agreements and all actions performed as part of this Agreement).

11.4 Effectiveness. Termination under this Article 11 shall not become effective so long as the alleged grounds for termination are in dispute and the matter(s) at issue have been submitted for resolution pursuant to this Agreement.

ARTICLE 12
INDEMNIFICATION

12.1 Survivability of Representations and Warranties. The representations and warranties made in Articles 5 and 6 or any instrument delivered pursuant to this Agreement

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survive the Closing Date and the consummation of the Contemplated Transactions for a period of [****]*; provided, however, that:

(a) Seller's representations and warranties set forth in Sections [****]* shall survive [****]*;

(b) Seller's representations and warranties set forth in Sections [****]*, and Buyer's representations and warranties set forth in Sections [****]* shall survive [****]*;

(c) Sellers' representations and warranties set forth in Section [****]* will survive the Closing Date for a period [****]*, including Governmental Entities, with respect to matters addressed in such Section; and

(d) Seller's representations and warranties set forth in [****]*.

12.2 Indemnification by Buyer. Buyer indemnifies and holds harmless Seller, and any of its directors, officers, employees, Affiliates, controlling persons, agents and representatives (the "Seller Indemnitees") from and against any Liabilities (a) to the extent such Liabilities relate to the Assumed Liabilities, (b) arising from Buyer's breach of this Agreement or any instrument delivered pursuant to this Agreement, (c) arising from the arising from the breach of any representation or warranty made by Buyer in this Agreement, or (d) third party Claims arising from the conduct of Buyer's business at the Facilities after the Closing Date (other than third party Claims arising under the Clinical Drug Substance Supply Agreement).

12.3 Indemnification by Seller. Seller indemnifies and holds harmless Buyer, and any of its directors, officers, employees, Affiliates, controlling persons, agents and representatives (the "Buyer Indemnitees") from and against any Liabilities (a) to the extent such Liabilities constitute Excluded Liabilities, (b) arising from Seller's breach of this Agreement or any instrument delivered pursuant to this Agreement, (c) arising from the breach of any representation or warranty made by Seller in this Agreement, or (d) third party Claims arising from the conduct of the Operations prior to the Closing Date.

12.4 Claims. Any Buyer Indemnitee or Seller Indemnitee claiming that it may be entitled to indemnification under this Article 12 (the "Indemnified Party") shall give prompt notice to the other party (the "Indemnifying Party") of each matter, action, cause of action, claim, demand, fact or other circumstances upon which a claim for indemnification (a "Claim") under this Article 12 may be based. Such notice shall contain, with respect to each Claim, such facts and information as are then reasonably available, the specific basis for indemnification hereunder, together with the amount or, if not then reasonably ascertainable, the estimated amount, determined in good faith. Failure to give prompt notice of a Claim hereunder shall not affect the Indemnifying Party's obligations under this Article, except to the extent the Indemnifying Party is prejudiced by such failure. If a Claim relates to a Proceeding brought against an Indemnified Party by a third party, the Indemnifying Party shall immediately upon

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receipt of notice of such claim, assume the defense of such claim with counsel reasonably by acceptable to the Indemnified Party.

12.5 Assertion of Claims. No claim shall be brought under Sections 12.2 or 12.3 unless Buyer Indemnitees, or any of them, or Seller Indemnitees, or any of them, as the case may be, at any time prior to the expiration of the applicable representation or warranty (as provided in Section 12.1), provide Buyer or Seller, as the case may be, with written notice of the existence of any such claim, specifying the nature and basis of such claim and the amount thereof, to the extent known; provided, that, the failure so to provide such notice to Buyer or Seller, as the case may be, will not relieve Buyer or Seller, as the case may be, from any Liability which they may have to Buyer Indemnitees or Seller Indemnitees, as the case may be, under this Agreement or otherwise, except to the extent that Buyer or Seller, as the case may be, reasonably demonstrates that such failure results in the loss or compromise of any rights or defenses of Buyer or Seller, as the case may be, and that Buyer or Seller, as the case may be, was not otherwise aware of such action or claim. Upon the giving of such written notice as aforesaid, Buyer Indemnitees, or any of them, or Seller Indemnitees, or any of them, as the case may be, shall have the right to commence legal proceedings prior or subsequent to the applicable survival date for the enforcement of their rights under Sections 12.2 or 12.3, as the case may be.

12.6 Payment of Claims; Limitation on Indemnification.

(a) Notwithstanding anything to the contrary in Sections 12.2 or 12.3, any Liability under Section 12.2(c) and Section 12.3(c), respectively, shall be limited as follows: [****]*.

(b) The aggregate maximum Liability of Seller or Buyer to the other party under [****]*.

12.7 Limitation; Exclusivity. No Claim shall be made or have any validity unless the Indemnified Party shall have given written notice of such Claim to the Indemnifying Party. If full recovery under any such Claim is not had within [****]* of such written notice, arbitration, pursuant to Section 13.2, must be commenced within thirty (30) days following the end of such [****]* period or such Claim shall be invalidated. This Article 12 provides the exclusive means by which a party may assert Claims against the other party, other than Claims based on fraud or willful misconduct, and Section 13.2 provides the exclusive means by which a party may bring actions against the other party with respect to any breach by the other party of its obligations under this Agreement.

ARTICLE 13
MISCELLANEOUS

13.1 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall (i) confer on any Person other than the parties hereto (and Buyer Indemnitees and Seller Indemnitees referred to in) and their respective successors or assigns any rights (including third party beneficiary rights), remedies, obligations or liabilities under or by reason

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of this Agreement, or (ii) constitute the parties hereto as partners or as participants in a joint venture. This Agreement shall not provide third parties with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to the terms of this Agreement. No third party shall have any right, independent of any right which may exist irrespective of this Agreement, under or granted by this Agreement, to bring any suit at law or equity for any matter governed by or subject to the provisions of this Agreement.

13.2 Governing Law; Jurisdiction; Dispute Resolution and Arbitration. This Agreement shall be deemed to have been made in the State of Minnesota and its form, execution, validity, construction and effect shall be determined in accordance with the laws of the state of Minnesota, without giving

effect to the principles of conflicts of law thereof. Disputes arising out of, relating to or in connection with this Agreement, or in relations between the parties with respect to the subject matter hereof, for any reason or under any circumstances, will be finally settled by a single arbitrator in a binding arbitration in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules and Procedures (the "JAMS Rules"). Upon receipt of written notice of the existence of a dispute by one party hereto to the other, the parties shall, within thirty (30) days conduct a meeting of one or more senior executives of each party, with full settlement authority, in an attempt to resolve the dispute. Each party shall make available appropriate personnel to meet and confer with the other party reasonably within the 30-day period. Upon the expiration of the 30-day period, or upon the termination of discussions between the senior executives, either party may elect arbitration of any dispute by written notice to the other (the "Arbitration Notice"). The arbitration shall be held in Minneapolis, Minnesota before one (1) arbitrator from JAMS having substantial experience as a jurist and mediator with significant disputes in the biotechnology and/or pharmaceuticals industry selected by the mutual agreement of Buyer and Seller; provided, however, that if such parties cannot agree on an arbitrator within thirty (30) days of the Arbitration Notice, either party may request JAMS select the arbitrator, and JAMS shall select an arbitrator pursuant to the procedure set out by the JAMS Rules, provided, however, that the arbitrator selected be a former judge with at least fifteen (15) years experience addressing as a jurist and/or mediator significant disputes in the biotechnology and or pharmaceutical industry. The arbitration shall be administered by JAMS pursuant to its AAA Rules. Judgment on the arbitration award may be entered in any court having jurisdiction. The arbitrator may, in the arbitration award, allocate for payment by the non-prevailing party all or part of the costs of the arbitration, including fees of the arbitrator and the reasonable attorneys' fees and costs incurred by the prevailing party. This Section shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In respect of any actions for injunctive or other equitable relief hereunder, any action or proceeding may be brought against any party in the state and federal courts located in the city of Minneapolis, Minnesota and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

13.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, it shall be modified, if possible, to the minimum extent necessary to make it valid and enforceable or, if such modification is not possible, such provision shall be stricken and the remaining provisions shall remain in full force and effect. If any of the terms or provisions of this Agreement is in conflict with any applicable statute or rule of law in any jurisdiction, then such term or provision shall be deemed inoperative in such

jurisdiction to the extent of such conflict and the parties will renegotiate the affected terms and conditions of this Agreement to resolve any inequities.

13.4 Entire Agreement. This Agreement and the ancillary transaction documents to be executed and delivered pursuant to this Agreement are intended to define the full extent of the legally enforceable undertakings and representations of the parties hereto, and no promise or representation, written or oral, which is not set forth explicitly in this Agreements or such ancillary transaction documents is intended by either party to be legally binding; provided, however, in the event this Agreement terminates, the Confidentiality Agreement shall continue in full force and effect pursuant to its terms. Each party acknowledges that in deciding to enter into this Agreement and to consummate the transaction contemplated hereby it has not relied upon any statements or representations, written or oral, other than those explicitly set forth in this Agreement.

13.5 Amendment. This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by both parties that specifically refers to this Agreement.

13.6 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth below (or at such other addresses as shall be specified by notice given in accordance with this Section):

If to Seller:

PDL BioPharma, Inc.
Attention: General Counsel
1400 Seaport Boulevard
Redwood City, CA 94063
Facsimile: 650-454-1468
E-mail: Francis.Sarena@pdl.com

with a copy to: (not to constitute notice)

DLA Piper US LLP
Attention: Howard Clowes
153 Townsend Street, Suite 800
San Francisco, CA 94107-1957
Facsimile:415-659-7410
E-mail: howard.clowes@dlapiper.com

If to Buyer:

GMN, Inc.
Attention: President
c/o Genmab, Inc.
457 North Harrison Street
Princeton, NJ 08540
Facsimile: +1 609-430-2482
E-mail: TLH@Genmab.com

with a copy to: (not to constitute notice)

Lisa Drakeman, President
Genmab A/S
c/o Genmab, Inc.
457 North Harrison Street
Princeton, NJ 08540
Facsimile: +1 609-430-2482

13.7 Assignment. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, but this Agreement shall not be assignable by either party hereto without the express written consent of the other party hereto which will not be unreasonably withheld.

13.8 No Agency. It is understood and agreed that each party shall have the status of an independent contractor under this Agreement and that nothing in this Agreement shall be construed as authorization for either party to act as agent for the other. Neither party shall incur any Liability for any act or failure to act by employees of the other party.

13.9 Construction.

(a) This Agreement has been prepared jointly and shall not be strictly construed against either party.

(b) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(c) Except as otherwise indicated, all references in this Agreement to "Articles," "Sections," "Exhibits," "Schedules" and "Attachments" are intended to refer to Articles and Sections of and Exhibits, Schedules and Attachments to this Agreement.

(d) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13.10 Payment of Expenses. Except as otherwise set forth in this Agreement, all costs and expenses associated with this Agreement and the Contemplated Transactions, including the fees of counsel and accountants, shall be borne by the party incurring such expenses.

13.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Any executed counterpart delivered by facsimile or other means of electronic transmission shall be deemed an original for all purposes.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties, through their authorized officers, have duly executed this as of the date first written above.

PDL BioPharma, Inc.,
a Delaware corporation

By: /s/ L. Patrick Gage
Name: L. Patrick Gage
Title: Chief Executive Officer

By: /s/ Andrew Guggenhime
Name: Andrew Guggenhime
Title: Senior Vice President and Chief Financial Officer

GMN, Inc.,
a Delaware corporation

By: /s/ Torben Lund-Hansen
Name: Torben Lund-Hansen
Title: President

SIGNATURE PAGE
ASSET PURCHASE AGREEMENT

EXHIBIT 31.1

CERTIFICATIONS

I, L. Patrick Gage, Interim Chief Executive Officer of PDL BioPharma, Inc., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of PDL BioPharma, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2008

/s/ L. Patrick Gage

L. Patrick Gage
Interim Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATIONS

I, Andrew L. Guggenhime, Senior Vice President and Chief Financial Officer of PDL BioPharma, Inc., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of PDL BioPharma, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2008

/s/ Andrew L. Guggenhime

Andrew L. Guggenhime
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

CERTIFICATION

L. Patrick Gage, Interim Chief Executive Officer, and Andrew L. Guggenhime, Senior Vice President and Chief Financial Officer, of PDL BioPharma, Inc. (the "Registrant"), each hereby certifies in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on his knowledge:

(1) the Quarterly Report on Form 10-Q for the quarter ended March 31, 2008 of the Registrant, to which this certification is attached as an exhibit (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

A signed original of this written statement required by Section 906 will be provided to the Securities and Exchange Commission or its staff upon request.

Dated: May 12, 2008

/s/ L. Patrick Gage
L. Patrick gage
Interim Chief Executive Officer
(Principal Executive Officer)

/s/ Andrew L. Guggenhime
Andrew L. Guggenhime
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)