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As filed with the Securities and Exchange Commission on December 23, 2010

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

SUPERNUS PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**20-2590184**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

1550 East Gude Drive
Rockville, MD 20850
(301) 838-2500
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jack A. Khattar
President and Chief Executive Officer
1550 East Gude Drive
Rockville, MD 20850
(301) 838-2500
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Paul M. Kinsella	**Russell P. Wilson**	**Mitchell S. Bloom**
Ropes & Gray LLP	**Supernus Pharmaceuticals, Inc.**	**Edward A. King**
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Approximate date of commencement of proposed sale to public:
As soon as practicable after this Registration Statement becomes effective.

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

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

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

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

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 the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common stock, $0.001 par value per share	$100,000,000	$7,130.00

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act. The proposed maximum aggregate offering price includes amounts attributed to shares of common stock that the underwriters may purchase if they exercise their option to purchase additional shares.

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

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SUBJECT TO COMPLETION, DATED DECEMBER 23, 2010

PRELIMINARY PROSPECTUS

Shares

Supernus Pharmaceuticals, Inc.

Common Stock
$ per share

This is the initial public offering of our common stock. We are selling shares of our common stock. We currently expect the initial public offering price to be between $ and $ per share of common stock.

We have granted the underwriters an option to purchase up to additional shares of common stock to cover over-allotments.

We intend to apply to list our common stock on the Nasdaq Global Market under the symbol "SUPN."

Investing in our common stock involves risks. See "Risk Factors" on page 9.

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

	Per Share	Total
Public Offering Price	$	$
Underwriting Discount	$	$
Proceeds to Supernus (before expenses)	$	$

The underwriters expect to deliver the shares to purchasers on or about , 2011 through the book-entry facilities of The Depository Trust Company.

Joint Book-Running Managers

Citi **Barclays Capital**

Co-Managers

Cowen and Company **Stifel Nicolaus Weisel**

, 2011.

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.

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SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus. While this summary highlights what we consider to be the most important information about us, you should carefully read this prospectus and the registration statement of which this prospectus is a part in their entirety before investing in our common stock, especially the risks of investing in our common stock which we discuss under "Risk Factors," the information set forth in "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes beginning on page F-1.

Unless the context requires otherwise, the words "Supernus," "we," "us" and "our" refer to Supernus Pharmaceuticals, Inc. and its subsidiaries.

Supernus Pharmaceuticals, Inc.

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists.

We use our proprietary technologies to enhance the therapeutic benefits of approved antiepileptic drugs, or AEDs, through advanced extended release formulations. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we expect to file a new drug application, or NDA, in the first quarter of 2011, and Epliga (extended release oxcarbazepine), which is in Phase III clinical trials. Our ADHD product candidates include SPN-810 (molindone hydrochloride), a novel treatment for impulsive aggression in patients with ADHD, and SPN-812, a novel non-stimulant treatment for ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development, including SPN-809, which would represent a novel mechanism of action for the U.S. antidepressant market. We believe our broad and diversified portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

The table below summarizes our current pipeline of novel product candidates.

Product	Indication	Status
SPN-538	Epilepsy	NDA to be filed Q1 2011
Epliga	Epilepsy	Phase III
SPN-810	Impulsive Aggression in ADHD	Phase II
SPN-812	ADHD	Phase II
SPN-809	Depression	IND filed

Our Late-Stage Neurology Portfolio

Epilepsy is a chronic neurological disorder characterized by recurrent convulsive seizures resulting from hyperactivity in the brain cells. It is estimated to affect 50 million people worldwide. Achieving reliable seizure control for patients, and avoiding the serious health and life dangers that can be associated with sudden unexpected, or breakthrough, seizures depends on patients being compliant and

diligent in taking their medications. We believe there are a number of benefits associated with extended release products in epilepsy that create a significant market opportunity for us.

- Extended release products have been shown to improve compliance and reduce breakthrough seizures.
- Extended release products have been shown to reduce side effects and improve tolerability.
- Managed care plans have not limited the success of extended release products.
- Extended release products have performed well in the market.

SPN-538 (extended release topiramate)

Our most advanced product candidate, SPN-538, is a novel oral once-daily extended release topiramate product for the treatment of epilepsy. Topiramate is marketed by Johnson & Johnson under the brand name Topamax and is available in a generic form. Topiramate is currently available only in immediate release form and is indicated for monotherapy and adjunctive therapy of epilepsy and for the treatment of migraine. It works by enhancing the inhibitory effect of the GABA (Gamma-Aminobutyric Acid) neurotransmitter that regulates neuronal excitability throughout the nervous system, blocking the excitatory effect of the glutamate neurotransmitter, blocking the sodium channel and inhibiting the carbonic anhydrase enzyme. The side effects associated with taking topiramate, which have tended to limit its use, include, among others, dizziness, fatigue, somnolence and slowing of certain cognitive functions.

SPN-538 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release products that are taken multiple times per day. SPN-538's pharmacokinetic profile delivers lower peak plasma concentrations and lower input rate over an extended time period, resulting in smoother and more consistent blood levels of topiramate during the day compared to immediate release Topamax. We have completed ten clinical trials in support of our NDA, which we expect to file in the first quarter of 2011. We are pursuing a regulatory strategy under Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, which would allow us to rely in our filing on the existing data and knowledge the U.S. Food and Drug Administration, or FDA, has from the NDA of Topamax.

Epliga (extended release oxcarbazepine)

Our second late-stage product candidate, Epliga, is a novel oral once-daily extended release formulation of oxcarbazepine and is currently in Phase III trials. Oxcarbazepine is marketed by Novartis under the brand name Trileptal and is available in a generic form. Trileptal is indicated for monotherapy and adjunctive therapy of epilepsy. Oxcarbazepine is an active voltage-dependent sodium channel blocker that, despite its effectiveness in treating epilepsy, is associated with many side effects that tend to limit its use. The side effects associated with taking oxcarbazepine include, among others, dizziness, double vision, somnolence, nausea and vomiting.

With a novel pharmacokinetic profile that delivers lower peak plasma concentrations, a slower rate of input, smoother and more consistent blood levels compared to immediate release products such as Trileptal, we believe Epliga has the potential of improving the tolerability of oxcarbazepine by reducing the side effects experienced by patients. We have completed eight clinical trials to support filing the NDA in the second half of 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which would allow us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Trileptal.

Our Psychiatry Portfolio

ADHD is a common CNS disorder characterized by developmentally inappropriate levels of inattention, hyperactivity, and impulsivity. ADHD affects an estimated 6.9% of all school-age children and 4.4% of adults in the United States. An estimated 60% to 80% of children with ADHD continue to meet the criteria for ADHD into adolescence. As many as 67% of children who have ADHD may have coexisting conditions such as oppositional defiant disorder, conduct disorder, anxiety disorder and depression. Approximately 25% of children with ADHD also exhibit persistent conduct problems, such as impulsive aggression.

SPN-810 (molindone hydrochloride)

We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. Molindone hydrochloride is unusual among anti-psychotics in that it is not associated with weight gain.

We have completed four clinical trials for SPN-810, including a Phase IIa trial in which we tested the safety and tolerability of immediate release molindone hydrochloride in children with ADHD who suffer from serious persistent conduct problems. This open-label, dose-ranging trial randomized 78 children, 6-12 years of age, into one of four treatment groups, which were given four different doses of immediate release molindone hydrochloride, between 10 mg and 40 mg per day, depending on weight, three times a day over a six-week treatment period, after 2-5 weeks of titration. SPN-810 was well tolerated in the trial with no clinically meaningful changes in standard hematology, clinical chemistry values, vital signs or electrocardiogram results. SPN-810 also showed improvements on the primary and secondary outcome measures, such as conduct problem and ADHD scales, across all four treatment groups.

SPN-812

We are developing SPN-812, which is currently in Phase II, as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. We initiated a proof-of-concept Phase IIa trial in mid-2010, and expect the results of this trial in the first quarter of 2011. The trial is a randomized, double-blind, placebo-controlled trial in approximately 50 adults with a current diagnosis of ADHD, with approximately 25 subjects per treatment group. SPN-812 has not been developed and marketed in the United States and, therefore, it would be considered and reviewed by the FDA as a new chemical entity.

Our Proprietary Technology Platforms

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and to enable the treatment of new indications. Our key proprietary technology platforms include: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). These technologies create customized product profiles designed to meet efficacy needs, permit more convenient and less frequent dosing, enhance patient compliance and improve tolerability in certain specific applications. Our proprietary technologies have been used in the following approved and marketed products: Carbatrol (carbamazepine), Equetro (carbamazepine), Adderall XR (mixed amphetamine salts), Sanctura XR (trospium chloride), Oracea (doxycycline) and Intuniv (guanfacine). We do not expect these products to contribute to our future cash position as we have either monetized the future revenues associated with

them or we developed them when we were formerly Shire Laboratories. In addition, we have used our proprietary technologies to develop an oral formulation of treprostinil diethanolamine which is currently in Phase III trials for pulmonary arterial hypertension.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry. Key elements of our strategy to achieve this goal are to:

- *Build in-house sales and marketing capabilities, focused on specialty markets in the United States, to promote SPN-538 and Epliga.* We are currently focused on attaining regulatory approval for, and bringing our two late-stage epilepsy product candidates, SPN-538 and Epliga, to market. As SPN-538 and Epliga progress towards U.S. regulatory approval, we intend to build our own targeted, specialty sales force to promote, if approved, SPN-538 and Epliga in the United States. We intend to direct our marketing efforts to high potential prescribers of both product candidates.

- *Continue to advance our product candidates in our psychiatry portfolio, including SPN-810 and SPN-812.* As part of our longer term strategy, we intend to further develop our product candidates in our psychiatry portfolio to enable further diversification of our pipeline and future growth. For example, we are currently preparing to initiate a Phase IIb trial of SPN-810.

- *Develop differentiated products by applying our technologies to known drug compounds.* We intend to continue to focus our development activities on known drug compounds and compounds with established mechanisms of action and thereby reduce the risks, costs and time typically associated with pharmaceutical product development. We intend to leverage our proprietary and in-licensed technologies and expand our patent portfolio to further develop and protect our diverse pipeline of product candidates.

- *Establish strategic partnerships to accelerate and maximize the potential of our product candidates worldwide.* We intend to continue to seek strategic collaborations with other pharmaceutical companies to commercialize our product candidates outside the United States. We believe that we are an attractive collaborator for pharmaceutical companies due to our broad portfolio of proprietary technologies and our product development track record.

- *Leverage our management team's expertise to develop and commercialize our broad portfolio of product candidates.* We intend to leverage the expertise of our executive management team in developing and commercializing innovative therapeutic products. We plan to continue to evaluate and develop additional CNS product candidates that we believe have significant commercial potential through our internal research and development efforts or, if appropriate, external collaborations.

Risks Associated With Our Business

Our ability to implement our business strategy is subject to numerous risks and uncertainties. As an early stage pharmaceutical company, we face many risks inherent in our business and our industry, as more fully described in the section entitled "Risk Factors" immediately following this summary, including the following:

- We are dependent on the success of our product candidates, which may never receive regulatory approval or be successfully commercialized.

- Final marketing approval of SPN-538, Epliga or any of our other product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.

- We have never generated any revenues from the sales of our own products, and we may never achieve or maintain profitability.
- If other versions of extended or controlled release topiramate or oxcarbazepine are approved and successfully commercialized, especially if approved before SPN-538 or Epliga, our business would be materially harmed.
- If the FDA or other applicable regulatory authorities approve generic products that compete with any of our product candidates, the sales of those product candidates may be adversely affected.

You should carefully consider all of the information set forth in this prospectus and, in particular, the information under the heading "Risk Factors," prior to making an investment in our common stock.

Corporate Information

We were incorporated in Delaware in 2005. Our principal executive office is located at 1550 East Gude Drive, Rockville, Maryland 20850. Our telephone number is (301) 838-2500.

We are the owner of various U.S. federal trademark registrations (®) and registration applications (TM), including the following marks referred to in this prospectus pursuant to applicable U.S. intellectual property laws: "Supernus®," "Epliga®," "Microtrol®," "Solutrol®," "ProScreen®," "OptiScreen®," "ProPhile®," and the registered Supernus Pharmaceuticals logo. All other trademarks or trade names referred to in this prospectus are the property of their respective owners.

THE OFFERING

Common stock we are offering	shares
Common stock to be outstanding after this offering	shares
Over-allotment option	We have granted the underwriters an option for a period of up to 30 days to purchase up to additional shares of common stock at the initial public offering price.
Use of proceeds after expenses	We estimate that the net proceeds from this offering will be approximately $ million, or approximately $ million if the underwriters exercise their over-allotment option in full. We expect to use the net proceeds from this offering to fund our clinical trials and for other general corporate purposes.
Risk factors	You should read the "Risk Factors" section of this prospectus beginning on page 9 for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.
Proposed NASDAQ Global Market symbol	SUPN

The number of shares of our common stock to be outstanding after this offering is based on 55,371,061 shares of common stock outstanding as of September 30, 2010 after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of September 30, 2010 into 49,000,000 shares of our common stock at the closing of this offering.

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

- 1,729,458 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2010, with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.48 per share (of which options to acquire 940,324 shares of common stock were vested as of September 30, 2010);
- 411,765 shares of common stock remaining to vest under a restricted stock award; and
- 2,487,716 additional shares of common stock reserved for future grants under our 2005 Stock Plan as of September 30, 2010.

Unless otherwise indicated, all information in this prospectus:

- assumes the issuance and sale of shares of our common stock in the offering at the initial public offering price of $ per share;
- assumes our planned -for- reverse stock split of our common stock to be effected in connection with this offering;
- gives effect to the automatic conversion of all outstanding shares of our preferred stock into 49,000,000 shares of common stock upon the closing of this offering; and
- assumes no exercise by the underwriters of their option to purchase up to shares of our common stock in this offering to cover over-allotments.

SUMMARY FINANCIAL DATA

We have derived our statement of operations data for the years ended December 31, 2007, 2008 and 2009 from our audited consolidated financial statements included in this prospectus. We have derived our balance sheet data as of September 30, 2010 and statement of operations data for each of the nine months ended September 30, 2009 and 2010 from our unaudited consolidated financial statements included in this prospectus. The unaudited consolidated financial statement data include, in our opinion, all adjustments (consisting only of normal recurring adjustments) that are necessary for a fair presentation of our consolidated financial position and consolidated results of operations for these periods.

Our historical results are not necessarily indicative of future operating results, and the results for the first nine months of 2010 are not necessarily indicative of results expected for the full year or for any other period. You should read this summary consolidated financial data in conjunction with the sections entitled "Risk Factors," "Capitalization," "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, all included elsewhere in this prospectus.

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars, except share and per share data)				
Consolidated Statement of Operations Data:					
Revenues					
Development and milestone revenues	$ 1,405	$ 2,697	$ 1,550	$ 1,181	$ 97
Royalty revenues	2,828	6,192	44,963	41,884	8,635
Total revenues	4,233	8,889	46,513	43,065	8,732
Costs and expenses					
Research and development	19,269	30,463	29,260	21,804	26,080
General and administrative	4,011	4,287	4,649	3,503	3,388
Total costs and expenses	23,280	34,750	33,909	25,307	29,468
Income (loss) from operations	(19,047)	(25,861)	12,604	17,758	(20,736)
Other income (expense):					
Interest income	1,773	1,057	514	101	623
Interest expense	—	(8,678)	(12,658)	(9,210)	(9,831)
Other	—	—	—	—	54
Total other income (expense)	1,773	(7,621)	(12,144)	(9,109)	(9,154)
Net income (loss)	$ (17,274)	$ (33,482)	$ 460	$ 8,649	$ (29,890)
Cumulative dividends on Series A convertible preferred stock	$ (3,430)	$ (3,430)	$ (3,430)	$ (2,573)	$ (2,573)
Net income (loss) attributable to common stockholders	$ (20,704)	$ (36,912)	$ (2,970)	$ 6,076	$ (32,463)
Net income (loss) per common share					
Basic	$ (4.21)	$ (6.61)	$ (0.53)	$ 1.08	$ (5.12)
Diluted	$ (4.21)	$ (6.61)	$ 0.01	$ 0.15	$ (5.12)
Weighted average number of common shares					
Basic	4,921,376	5,587,467	5,653,506	5,610,047	6,345,420
Diluted	4,921,376	5,587,467	56,324,761	56,282,411	6,345,420
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(1)			$ 460		$ (29,890)
Weighted-average number of shares used in calculating pro forma net income (loss) per share — basic and diluted (unaudited)(1)			56,324,761		55,345,420
Pro forma net income (loss) per share — basic and diluted(1)			$ 0.01		$ (0.54)

(1) Pro forma net loss per share basic and diluted have been calculated assuming the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering, as if they had converted at the beginning of the period. Pro forma net loss per share basic and diluted do not give effect to the sale of shares of common stock that we are offering pursuant to this prospectus or any related estimated net proceeds therefrom. See Note 2 to our audited consolidated financial statements for an explanation of the method used to calculate the pro forma basic and diluted net income (loss) per common share and the number of the per share amounts.

	As of September 30, 2010		
	Actual	Pro Forma (unaudited)	Pro Forma as Adjusted
	(in thousands of dollars)		
Consolidated Balance Sheet Data:			
Unrestricted cash and cash equivalents, and marketable securities	$ 45,822	$ 45,822	$
Restricted cash and cash equivalents, and marketable securities	1,680	1,680	
Working capital	33,835	33,835	
Total assets	57,502	57,502	
Accumulated deficit	(85,210)	(85,210)	
Total stockholders' deficit	(35,917)	(35,917)	

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below with all of the other information included in this prospectus before deciding to invest in our common stock. These risks may result in material harm to our business and our financial condition and results of operations. In this event, the market price of our common stock may decline and you could lose part or all of your investment.

Risks Related to Our Business and Industry

We are dependent on the success of our product candidates, which may never receive regulatory approval or be successfully commercialized.

To date, we have expended significant time, resources, and effort on the development of our product candidates, and a substantial majority of our resources are now focused on seeking marketing approval for and planning for potential commercialization of our two most advanced product candidates, SPN-538 and Epliga, in the United States. All of our other product candidates are in earlier stages of development and subject to the risks of failure inherent in developing drug products. Accordingly, our ability to generate significant product revenues in the near term will depend almost entirely on our ability to successfully obtain marketing approval for and commercialize SPN-538 and Epliga. Neither SPN-538 nor Epliga are approved for marketing in any jurisdiction and, therefore, unless they obtain regulatory approval, they may never be commercialized.

Our ability to successfully commercialize any of our products candidates will depend, among other things, on our ability to:

- successfully complete our clinical trials;
- produce, through a validated process, sufficiently large quantities of our product candidates to permit successful commercialization;
- receive marketing approvals from the U.S. Food and Drug Administration, or FDA, and similar foreign regulatory authorities;
- establish commercial manufacturing arrangements with third-party manufacturers;
- build and maintain strong sales, distribution and marketing capabilities sufficient to launch commercial sales of our product candidates;
- establish collaborations with third parties for the commercialization of our product candidates in countries outside the United States, and such collaborators' ability to obtain regulatory and reimbursement approvals in such countries;
- secure acceptance of our product candidates from physicians, health care payors, patients and the medical community; and
- manage our spending as costs and expenses increase due to clinical trials, regulatory approvals and commercialization.

There are no guarantees that we will be successful in completing these tasks. If we are unable to successfully complete these tasks, we may not be able to commercialize SPN-538, Epliga or any of our other product candidates in a timely manner, or at all, in which case we may be unable to generate sufficient revenues to sustain and grow our business. In addition, although we believe that we have already incurred the majority of the costs related to the development of SPN-538 and Epliga, if we experience unanticipated delays or problems, these costs could substantially increase and our business, financial condition and results of operations will be adversely affected.

Final marketing approval of SPN-538, Epliga or any of our other product candidates by the FDA or other regulatory authorities may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.

Our business depends on the successful development and commercialization of our product candidates. We are not permitted to market any of our product candidates in the United States until we receive approval of a new drug application, or NDA, from the FDA, or in any foreign jurisdiction until we receive the requisite approvals from such jurisdiction. Satisfaction of regulatory requirements typically takes many years, is dependent upon the type, complexity and novelty of the product and requires the expenditure of substantial resources. We cannot predict whether or when we will obtain regulatory approval to commercialize our product candidates and we cannot, therefore, predict the timing of any future revenues from these product candidates, if any.

With respect to our two most advanced product candidates, SPN-538 (extended release topiramate) and Epliga (extended release oxcarbazepine), we are pursuing a regulatory strategy pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, or FDCA, which would allow us to rely in our filings on the existing data from the NDAs of Topamax and Trileptal, respectively. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant or clinical trials demonstrating safety and effectiveness. The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons. For example, the FDA:

- could determine that we cannot rely on Section 505(b)(2) for SPN-538 or Epliga;
- could determine that the information provided by us was inadequate, contained clinical deficiencies or otherwise failed to demonstrate the safety and effectiveness of SPN-538, Epliga or any of our product candidates for any indication;
- may not find the data from bioequivalence studies and/or clinical trials sufficient to support the submission of an NDA or to obtain marketing approval in the United States, including any findings that the clinical and other benefits of our product candidates outweigh their safety risks;
- may disagree with our trial design or our interpretation of data from preclinical studies, bioequivalence studies and/or clinical trials, or may change the requirements for approval even after it has reviewed and commented on the design for our trials;
- may determine that we have identified the wrong reference listed drug or drugs or that approval of our Section 505(b)(2) application for SPN-538, Epliga or any of our other product candidates is blocked by patent or non-patent exclusivity of the reference listed drug or drugs;
- may identify deficiencies in the manufacturing processes or facilities of third party manufacturers with which we enter into agreements for the manufacturing of our product candidates;
- may approve our product candidates for fewer or more limited indications than we request, or may grant approval contingent on the performance of costly post-approval clinical trials;
- may change its approval policies or adopt new regulations; or
- may not approve the labeling claims that we believe are necessary or desirable for the successful commercialization of our product candidates.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, some pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), or if the FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) application that we submit. Any failure to obtain regulatory approval of our product candidates would significantly limit our ability to generate revenues, and any failure to obtain such approval for all of the indications and labeling claims we deem desirable could reduce our potential revenues.

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

We may be unable to sufficiently demonstrate the safety and efficacy of our product candidates to obtain regulatory approval. We must demonstrate with substantial evidence gathered in well-controlled studies, and to the satisfaction of the FDA with respect to approval in the United States (and to the satisfaction of similar regulatory authorities in other jurisdictions with respect to approval in those jurisdictions), that each product candidate is safe and effective for use in the target indication. The FDA may require us to conduct or perform additional studies or trials to adequately demonstrate safety and efficacy, which could prevent or significantly delay our receipt of regulatory approval and, ultimately, the commercialization of that product candidate.

In addition, the results from the trials that we have completed for our product candidates may not be replicated in future trials, or we may be unable to demonstrate sufficient safety and efficacy to obtain the requisite regulatory approvals for our product candidates. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced development, even after promising results in earlier trials. If our product candidates are not shown to be safe and effective, our clinical development programs could be delayed or might be terminated.

Our product candidates may cause undesirable side effects or have other properties that delay or prevent their regulatory approval or limit their commercial potential.

Undesirable side effects caused by any of our product candidates could cause us or regulatory authorities to interrupt, delay or halt development and could result in the denial of regulatory approval by the FDA or other regulatory authorities, and potential products liability claims. Immediate release topiramate and oxcarbazepine, drug compounds upon which our SPN-538 and Epliga product candidates are based, respectively, are known to cause various side effects, including dizziness, paresthesia, headaches, cognitive deficiencies such as memory loss and speech impediment, digestive problems, somnolence, double vision, gingival enlargement, nausea, weight gain, and fatigue. The use of SPN-538 and Epliga may cause similar side effects as compared to their reference products, or may cause additional or different side effects. Any undesirable side effects that are caused by any of our product candidates could have a material adverse effect upon that product candidate's development program and our business as a whole.

In addition, if any of our product candidates receive marketing approval, and we or others later identify undesirable side effects caused by the product candidate, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approvals of the product candidate or otherwise require us to take the approved product off the market;
- regulatory authorities may require additional warnings, or a narrowing of the indication, on the product label;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients;

- we may be required to modify the product in some way;
- the FDA may require us to conduct additional clinical trials or costly post-marketing testing and surveillance to monitor the safety or efficacy of the product;
- sales of approved product candidates may decrease significantly;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining the commercial success of our product candidates and could substantially increase commercialization costs.

If other versions of extended or controlled release topiramate or oxcarbazepine are approved and successfully commercialized, especially if approved before SPN-538 or Epliga, our business would be materially harmed.

Other third parties may seek approval to manufacture and market their own versions of extended release topiramate or oxcarbazepine in the United States. If any of these parties obtain FDA approval before we do, they may be entitled to three years of marketing exclusivity. Such exclusivity would delay the commercialization of SPN-538 and Epliga and, as a result, we may never achieve significant market share for these product candidates. Consequently, revenues from product sales of these product candidates would be similarly delayed and our business, including our development programs, and growth prospects would suffer. For example, we are aware that Upsher-Smith Laboratories, or Upsher-Smith, is currently conducting a Phase III clinical trial for USL255 (extended release topiramate). If Upsher-Smith's USL255 product is approved by the FDA before SPN-538, then Upsher-Smith may obtain three years of marketing exclusivity based on its Phase III clinical trial, which would significantly delay our entry into the U.S. market. Even if SPN-538 is approved before USL255, we may not be entitled to any marketing exclusivity and, other than under circumstances in which third parties may infringe or are infringing our patents, we may not be able to prevent the submission or approval of another full NDA for any competitor's extended or controlled release topiramate product candidate, including USL255. In addition, we are aware of companies who are marketing outside of the United States modified-release oxcarbazepine products, such as Apydan, which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration. If companies with modified-release oxcarbazepine products outside of the United States pursue or obtain approval of their products within the United States before we do, such competing products may be granted three year marketing exclusivity, which would significantly delay Epliga's entry into the U.S. market. Such a delay would limit the potential success of Epliga in the United States, and our business and growth prospects would be materially impaired. Accordingly, if any third party is successful in obtaining approval to manufacture and market their own versions of extended release topiramate or oxcarbazepine in the United States, we may not be able to recover expenses incurred in connection with the development of our product candidates or realize revenues from SPN-538 or Epliga.

Delays or failures in the completion of testing of our product candidates would increase our costs and delay or limit our ability to generate revenues.

Delays or failures in the completion of clinical trials for our product candidates could significantly raise our product development costs. We do not know whether current or planned trials will be completed on schedule, if at all. The commencement and completion of clinical development can be delayed or halted for a number of reasons, including:

- difficulties obtaining regulatory approval to commence a clinical trial or complying with conditions imposed by a regulatory authority regarding the scope or term of a clinical trial;

- delays in reaching or failure to reach agreement on acceptable terms with prospective clinical research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- insufficient or inadequate supply or quantity of a product candidate for use in trials;
- difficulties obtaining institutional review board approval to conduct a trial at a prospective site;
- challenges recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including competition from other programs for the treatment of similar conditions;
- severe or unexpected drug-related side effects experienced by patients in a clinical trial; and
- difficulty retaining patients who have initiated a clinical trial but may be prone to withdraw due to side effects from the therapy, lack of efficacy or personal issues.

Clinical trials may also be delayed as a result of ambiguous or negative interim results. In addition, clinical trials may be suspended or terminated by us, an institutional review board overseeing the clinical trial at a trial site (with respect to that site), the FDA or other regulatory authorities due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or the trial protocols;
- observations during inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities that ultimately result in the imposition of a clinical hold;
- unforeseen safety issues; or
- lack of adequate funding to continue the trial.

In addition, failure to conduct the clinical trial in accordance with regulatory requirements or the trial protocols may also result in the inability to use the data to support product approval. Additionally, changes in regulatory requirements and guidance may occur, and we may need to amend clinical trial protocols to reflect these changes. Amendments may require us to resubmit our clinical trial protocols to institutional review boards for reexamination, which may impact the costs, timing or successful completion of a clinical trial. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates. If we experience delays in completion of, or if we terminate any of our clinical trials, our ability to obtain regulatory approval for our product candidates may be materially harmed, and our commercial prospects and ability to generate product revenues will be diminished.

If we do not obtain marketing exclusivity for our product candidates, our business may suffer.

Under the Hatch-Waxman Amendments, three years of marketing exclusivity may be granted for the approval of new and supplemental NDAs, including Section 505(b)(2) applications, for, among other things, new indications, dosage forms, routes of administration, or strengths of an existing drug, or for a new use, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application. This exclusivity, which is sometimes referred to as clinical investigation exclusivity, prevents the FDA from approving an application under Section 505(b)(2) for the same conditions of use associated with the new clinical investigations before the expiration of three years from the date of approval. Such exclusivity, however, would not prevent the approval of another application if the applicant submits a Section 505(b)(1) NDA and has conducted its own adequate, well-controlled clinical trials demonstrating safety and efficacy, nor would it prevent approval of a generic product or Section 505(b)(2) product that did not incorporate the exclusivity-protected changes of the approved drug product. Under the Hatch-Waxman Amendments, newly-approved drugs and indications may also benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Amendments provides five-year marketing

exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, or NCE, meaning that the FDA has not previously approved any other drug containing the same active pharmaceutical ingredient, or active moiety. Although protection under the Hatch-Waxman Amendments will not prevent the submission or approval of another full Section 505(b)(1) NDA, such an NDA applicant would be required to conduct its own preclinical and adequate, well-controlled clinical trials to demonstrate safety and effectiveness. If we are unable to obtain marketing exclusivity for our product candidates including SPN-538, our competitors may obtain approval of competing products more easily than if we had such marketing exclusivity, and our future revenues could be reduced, possibly materially.

We expect intense competition and, if our competitors develop or market alternatives for treatments of our target indications, our commercial opportunities will be reduced or eliminated.

The pharmaceutical industry is characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary therapeutics. We face competition from a number of sources, some of which may target the same indications as our product candidates, including large pharmaceutical companies, smaller pharmaceutical companies, biotechnology companies, academic institutions, government agencies and private and public research institutions. The availability of competing products will limit the demand and the price we are able to charge for any of our product candidates that are commercialized unless we are able to differentiate them. We anticipate that we will face intense competition when and if our product candidates are approved by regulatory authorities and we begin the commercialization process. For instance, there are over 15 branded products, as well as their generic counterparts, on the U.S. market indicated to treat epilepsy. In addition, competition in the attention deficit hyperactivity disorder, or ADHD, market in the United States has increased with the launch of several products in recent years, including the launch of generic versions of branded drugs such as Adderall XR. As a result, we may not be able to recover expenses incurred in connection with the development of our product candidates or realize revenues from any commercialized product.

In addition to already marketed competing products, we believe certain companies are developing other products which could compete with our product candidates should they be approved by regulatory authorities. For example, according to Datamonitor, as of April 2010, there were 47 compounds in preclinical and clinical development for epilepsy across the United States, Japan, France, Germany, Italy, Spain and the United Kingdom. Of these, 15 are currently in late-stage (Phase II or later) clinical trials. We are also aware that Upsher-Smith announced the initiation of a Phase III clinical trial for USL255 (extended release topiramate) for the management of epilepsy in adults. If successful, such competing product could limit the potential success of SPN-538, and our growth prospects would be materially impaired. In addition, we are aware of companies who are marketing outside of the United States modified-release oxcarbazepine products, such as Apydan which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration. If companies with modified-release oxcarbazepine products outside of the United States obtain approval for their products within the United States prior to us, such competing products may obtain three years of marketing exclusivity, which would significantly delay our entry into the U.S. market and limit the potential success of Epliga. Further, new developments, including the development of other drug technologies, may render our product candidates obsolete or noncompetitive. As a result, our product candidates may become obsolete before we recover expenses incurred in connection with their development or realize revenues from any commercialized product.

Further, many competitors have substantially greater:

- capital resources;
- research and development resources and experience, including personnel and technology;
- drug development, clinical trial and regulatory resources and experience;

- sales and marketing resources and experience;
- manufacturing and distribution resources and experience;
- name recognition; and
- resources, experience and expertise in prosecution and enforcement of intellectual property rights.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit or block us from developing or commercializing our product candidates. Our competitors may also develop drugs that are more effective, more useful, better tolerated, subject to fewer or less severe side effects, more widely prescribed or accepted or less costly than ours and may also be more successful than us in manufacturing and marketing their products. If we are unable to compete effectively with the products of our competitors or if such competitors are successful in developing products that compete with any of our product candidates that are approved, our business, results of operations, financial condition and prospects may be materially adversely affected. Mergers and acquisitions in the pharmaceutical industry may result in even more resources being concentrated at competitors. Competition may increase further as a result of advances made in the commercial applicability of technologies and greater availability of capital for investment.

If the FDA or other applicable regulatory authorities approve generic products that compete with any of our product candidates, the sales of those product candidates would be adversely affected.

Once an NDA, including a Section 505(b)(2) application, is approved, the product covered thereby becomes a "listed drug" which can, in turn, be cited by potential competitors in support of approval of an abbreviated new drug application, or ANDA. The FDCA, FDA regulations and other applicable regulations and policies provide incentives to manufacturers to create modified, non-infringing versions of a drug to facilitate the approval of an ANDA or other application for generic substitutes. These manufacturers might only be required to conduct a relatively inexpensive study to show that their product has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use, or labeling, as our product candidate and that the generic product is bioequivalent to ours, meaning it is absorbed in the body at the same rate and to the same extent as our product candidate. These generic equivalents, which must meet the same quality standards as branded pharmaceuticals, would be significantly less costly than ours to bring to market and companies that produce generic equivalents are generally able to offer their products at lower prices. Thus, after the introduction of a generic competitor, a significant percentage of the sales of any branded product is typically lost to the generic product. Accordingly, competition from generic equivalents to our product candidates would materially adversely impact our revenues, profitability and cash flows and substantially limit our ability to obtain a return on the investments we have made in our product candidates.

We have limited sales and marketing experience and resources, and we may not be able to effectively market and sell our product candidates in the United States, if approved.

We are preparing the build-out of our commercial infrastructure to launch our product candidates within the United States. We have limited sales or marketing experience. To develop internal sales and marketing capabilities, we will have to invest significant amounts of financial and management resources, some of which will be committed prior to any confirmation that SPN-538, Epliga or any other of our product candidates will be approved. If the commercial launch of SPN-538 or Epliga is delayed for a protracted period of time as a result of FDA requirements or other reasons, we would

incur significant expenses prior to being able to realize any revenues. Further, we could face a number of additional risks in establishing internal sales and marketing capabilities, including:

- we may not be able to attract talented and qualified personnel to build an effective marketing or sales force;
- the cost of establishing a marketing or sales force may not be justifiable in light of the revenues generated by any of our product candidates, if approved; and
- our direct sales and marketing efforts may not be successful.

If we are unable to establish adequate sales and marketing capabilities, we may not be able to generate product revenues and may never become profitable.

We intend to rely on third party collaborators to market and commercialize our product candidates outside of the United States, who may fail to effectively commercialize our product candidates.

Outside of the United States we currently plan to utilize strategic partners or contract sales forces, where appropriate, to assist in the commercialization of our product candidates, if approved. We currently possess limited resources and may not be successful in establishing collaborations or co-promotion arrangements on acceptable terms, if at all. We also face competition in our search for collaborators and co-promoters. By entering into strategic collaborations or similar arrangements, we will rely on third parties for financial resources and for development, commercialization, sales and marketing and regulatory expertise. Any collaborators may fail to develop or effectively commercialize our product candidates because they cannot obtain the necessary regulatory approvals, they lack adequate financial or other resources or they decide to focus on other initiatives. Any failure of our third party collaborators to successfully market and commercialize our product candidates outside of the United States would diminish our revenues and harm our results of operations.

Limitations on our patent rights relating to our product candidates may limit our ability to prevent third parties from competing against us.

Our success will depend on our ability to obtain and maintain patent protection for our proprietary technologies and our product candidates, preserve our trade secrets, prevent third parties from infringing upon our proprietary rights and operate without infringing upon the proprietary rights of others. To that end, we seek patent protection in the United States and internationally for our product candidates. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad (including Europe, Canada and certain other countries when appropriate) relating to proprietary technologies that are important to the development of our business.

The strength of patents in the pharmaceutical industry involves complex legal and scientific questions and can be uncertain. Patent applications in the United States and most other countries are confidential for a period of time until they are published, and publication of discoveries in scientific or patent literature typically lags actual discoveries by several months or more. As a result, we cannot be certain that we were the first to conceive inventions covered by our patents and pending patent applications or that we were the first to file patent applications for such inventions. In addition, we cannot be certain that our patent applications will be granted, that any issued patents will adequately protect our intellectual property or that such patents will not be challenged, narrowed, invalidated or circumvented.

We also rely upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us. It is possible that technology relevant to our business will be independently developed by a person

that is not a party to such an agreement. Furthermore, if the employees and consultants that are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors. Any failure to adequately prevent disclosure of our trade secrets and other proprietary information could have a material adverse impact on our business.

In addition, the laws of certain foreign countries do not protect proprietary rights to the same extent or in the same manner as the United States, and therefore, we may encounter problems in protecting and defending our intellectual property in certain foreign jurisdictions.

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

Our commercial success depends upon our ability and the ability of our collaborators to develop, manufacture, market and sell their approved products and our product candidates and use our proprietary technologies without infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we and our collaborators are developing product candidates. As the pharmaceutical industry expands and more patents are issued, the risk increases that our collaborators' approved products and our product candidates may give rise to claims of infringement of the patent rights of others. There may be issued patents of third parties of which we are currently unaware, that may be infringed by our collaborators' approved products or our product candidates including SPN-538 and Epliga, which could prevent us from being able to commercialize these product candidates. Because patent applications can take many years to issue, there may be currently pending applications which may later result in issued patents that our collaborators' approved products or our product candidates may infringe.

We may be exposed to, or threatened with, future litigation by third parties alleging that our collaborators' approved products and product candidates infringe their intellectual property rights. If one of our collaborators' approved products and product candidates is found to infringe the intellectual property rights of a third party, we or our collaborators could be enjoined by a court and required to pay damages and could be unable to commercialize the applicable approved products and product candidates unless we obtain a license to the patent. A license may not be available to us on acceptable terms, if at all. In addition, during litigation, the patent holder could obtain a preliminary injunction or other equitable relief which could prohibit us from making, using or selling our approved product candidates, pending a trial on the merits, which may not occur for several years.

There is a substantial amount of litigation involving patent and other intellectual property rights in the pharmaceutical industry generally. If a third party claims that we or our collaborators infringe its intellectual property rights, we may face a number of issues, including, but not limited to:

- infringement and other intellectual property claims which, regardless of merit, may be expensive and time-consuming to litigate and may divert our management's attention from our core business;
- substantial damages for infringement, which we may have to pay if a court decides that the product at issue infringes on or violates the third party's rights, and, if the court finds that the infringement was willful, we could be ordered to pay treble damages and the patent owner's attorneys' fees;
- a court prohibiting us from selling our approved product candidate, if any, unless the third party licenses its rights to us, which it is not required to do;
- if a license is available from a third party, we may have to pay substantial royalties, fees or grant cross-licenses to our intellectual property rights; and
- redesigning our product candidates so they do not infringe, which may not be possible or may require substantial monetary expenditures and time.

We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. For example, we are involved in the following matters related to Paragraph IV Certification Notice Letters that we have received in connection with our collaborators' products. In connection with an ANDA, a Paragraph IV Certification Notice Letter notifies the FDA that one or more patents listed in the FDA's Approved Drug Product List (Orange Book) is alleged invalid, unenforceable or will not be infringed by the ANDA product.

- *Sanctura XR Litigation.* We are involved in a patent infringement matter filed in response to three Paragraph IV Certification Notice Letters that we received in June 2009, November 2009 and April 2010 regarding an ANDA submitted to the FDA by each of Watson Laboratories, Inc., Sandoz, Inc. and Paddock Laboratories, Inc., respectively, requesting approval to market and sell generic versions of Sanctura XR trospium chloride extended release capsules, a product that is manufactured and sold by Allergan, Inc., which is the marketing partner of Endo Pharmaceuticals Solutions Inc. The ANDA filers alleged in their respective original notice letters that the U.S. Patent Number 7,410,978 issued to us is invalid, unenforceable and/or will not be infringed by the respective company's manufacture, use or sale of the product described in its ANDA submission. Our patent covers extended-release formulations containing trospium chloride and expires on February 1, 2025, and is licensed to Endo Pharmaceuticals Solutions Inc. Each of the ANDA filers subsequently amended their respective notice letters to include other U.S. patents related to Sanctura XR trospium chloride (specifically, U.S. Patent Nos. 7,759,359; 7,763,635; 7,781,448; and 7,781,449). We intend to support Allergan, Inc. and Endo Pharmaceuticals Solutions Inc. in their efforts to contest this matter.

- *Oracea Litigation.* We are involved in a patent infringement action filed in response to a Paragraph IV Certification Notice Letter that we received in November 2010 regarding an ANDA, submitted to the FDA by Lupin Limited, requesting approval to market and sell generic versions of Oracea doxycycline, a product that is manufactured and sold by Galderma Laboratories, L.P. The ANDA filer, Lupin, alleged in the original notice letter that the U.S. Patent Number 7,749,532 issued to us is invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in its ANDA submission. In addition, we have received in October 2010, a complaint for Declaratory Judgment from Mylan alleging invalidity of the 7,749,532 patent. Our patent covers once-daily formulations of doxycycline, including methods of their use in treating rosacea and processes regarding their preparation, and expires on December 19, 2027, and is licensed to Galderma Laboratories, L.P. In both cases, we intend to support Galderma Laboratories, L.P. in its efforts to contest this matter.

- *Intuniv Litigation.* We are involved in several patent infringement actions filed in response to Paragraph IV Certification Notice Letters that we received in March, April and October 2010 regarding ANDAs submitted to the FDA requesting approval to market and sell generic versions of Intuniv, a product that is manufactured and sold by Shire plc. The defendants in these cases are Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries, Ltd; Actavis Elizabeth LLC and Actavis Inc.; Anchen Pharmaceuticals, Inc. and Anchen, Inc.; Watson Pharmaceuticals, Inc., Watson Laboratories, Inc. - Florida Watson Pharma, Inc. and ANDA, Inc.; and Impax Laboratories, Inc. The ANDA filers allege that our U.S. Patent Numbers 6,287,599 and 6,811,794 are invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of the product described in its ANDA submissions. Our patents cover extended-release formulations containing guanfacine hydrochloride, with the latest patent expiration in 2022. Both of these patents are licensed to Shire plc. We intend to support Shire plc in its efforts to contest this matter.

Unless a court determines that our patents are invalid or unenforceable, we do not expect an adverse decision in any of the foregoing matters will have a material adverse effect on our business as we have monetized the future revenues associated with each of Sanctura XR, Oracea and Intuniv. However, in any infringement proceeding including the foregoing, a court may decide that a patent of ours is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent application at risk of not issuing.

Interference proceedings brought by the U.S. Patent and Trademark Office, or USPTO, may be necessary to determine the priority of inventions with respect to our patents and patent applications or those of our collaborators. An unfavorable outcome could require us to cease using the technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if a prevailing party does not offer us a license on terms that are acceptable to us. Litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distraction of our management and other employees. We may not be able to prevent, alone or with our collaborators, misappropriation of our proprietary rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceeding or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. There can be no assurance that our product candidate will not be subject to same risks.

The commercial success of our product candidates, if approved, depends upon attaining market acceptance by physicians, patients, third party payors and the medical community.

Even if our product candidates are approved for sale by the appropriate regulatory authorities, physicians may not prescribe our approved product candidates, in which case we would not generate the revenues we anticipate. Market acceptance of any of our product candidates by physicians, patients, third party payors and the medical community depends on, among other things:

- our ability to provide acceptable evidence of safety and efficacy;
- acceptance by physicians and patients of each product candidate as a safe and effective treatment;
- perceived advantages of our product candidates over alternative treatments;
- relative convenience and ease of administration of our product candidates compared to existing treatments;
- any labeling restrictions placed upon each product candidate in connection with its approval;
- the prevalence and severity of the adverse side effects of each of our product candidates;
- the clinical indications for which each of our product candidates is approved, including any potential additional restrictions placed upon each product candidate in connection with its approval;
- prevalence of the disease or condition for which each product candidate is approved;
- the cost of treatment in relation to alternative treatments, including generic products;

- the extent to which each product is approved for inclusion on formularies of hospitals and managed care organizations;
- any negative publicity related to our or our competitors' products, including as a result of any related adverse side effects;
- the effectiveness of our or any current or future collaborators' sales, marketing and distribution strategies;
- pricing and cost effectiveness; and
- the availability of adequate reimbursement by third parties.

For example, new AEDs that were introduced in the market as new chemical entities, or NCEs, historically have not quickly gained significant market share against existing molecules in the epilepsy market, because physicians are often reluctant to change a stable patient's existing therapy (even for a NCE) and risk a breakthrough seizure in their patients. Although our epilepsy product candidates are not NCEs, if approved, they would be subject to the risk that they will not be able to gain significant market share against existing AEDs. If our product candidates do not achieve an adequate level of acceptance by physicians, third-party payors and patients, we may not generate sufficient revenues from these product candidates to become or remain profitable on a timely basis, if at all.

Even if our product candidates receive regulatory approval, they may be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements.

Even if U.S. regulatory approval is obtained, the FDA may still impose significant restrictions on a product's indicated uses or marketing or impose ongoing requirements for potentially costly post-approval studies. Our product candidates would also be, and our collaborators' approved products are, subject to ongoing FDA requirements governing the labeling, packaging, storage, advertising, promotion, recordkeeping and submission of safety and other post-market information. In addition, manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current good manufacturing practices, or GMP, regulations. If we, our collaborators or a regulatory authority discovers previously unknown problems with a product, such as side effects of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory authority may impose restrictions on that product or the manufacturer, including requiring withdrawal of the product from the market or suspension of manufacturing. If we, our collaborators, our collaborators' approved products or our product candidates, or the manufacturing facilities for our collaborators' approved products or our product candidates fail to comply with applicable regulatory requirements, a regulatory authority may:

- issue warning letters or untitled letters;
- impose civil or criminal penalties;
- suspend regulatory approval;
- suspend any ongoing bioequivalence and/or clinical trials;
- refuse to approve pending applications or supplements to applications filed by us;
- impose restrictions on operations, including costly new manufacturing requirements, or suspension of production; or
- seize or detain products or require us to initiate a product recall.

In addition, if any of our product candidates are approved, our product labeling, advertising and promotion would be subject to regulatory requirements and continuing regulatory review. The FDA strictly regulates the promotional claims that may be made about prescription products. In particular, a

product may not be promoted for uses that are not approved by the FDA as reflected in the product's approved labeling. If we receive marketing approval for our product candidates, physicians may nevertheless prescribe our product candidates to their patients in a manner that is inconsistent with the approved label. The FDA and other authorities actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant sanctions. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. If we are found to have promoted off-label uses, we may be enjoined from such off-label promotion and become subject to significant liability, which would have an adverse effect on our reputation, business and revenues, if any.

If we fail to produce our product candidates in the volumes that we require on a timely basis, or fail to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the development and commercialization of our product candidates.

As we do not currently own or operate manufacturing facilities for the commercial production of any of our product candidates, we currently depend on third-party contract manufacturers for the supply of the active pharmaceutical ingredients for our product candidates, including drug substance and final product. Any future curtailment in the availability of raw materials could result in production or other delays with consequent adverse effects on us. In addition, because regulatory authorities must generally approve raw material sources for pharmaceutical products, changes in raw material suppliers may result in production delays or higher raw material costs.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Pharmaceutical companies often encounter difficulties in production, particularly in scaling up production, of their products. These problems include manufacturing difficulties relating to production costs and yields, quality control, including stability of the product and quality assurance testing, shortages of qualified personnel, as well as compliance with federal, state and foreign regulations. If we are unable to demonstrate stability in accordance with commercial requirements, or if our manufacturers were to encounter difficulties or otherwise fail to comply with their obligations to us, our ability to obtain FDA approval and market our product candidates would be jeopardized. In addition, any delay or interruption in the supply of clinical trial supplies could delay or prohibit the completion of our bioequivalence and/or clinical trials, increase the costs associated with conducting our bioequivalence and/or clinical trials and, depending upon the period of delay, require us to commence new trials at significant additional expense or to terminate a trial.

Manufacturers of pharmaceutical products need to comply with GMP requirements enforced by the FDA through their facilities inspection programs. These requirements include, among other things, quality control, quality assurance and the maintenance of records and documentation. Manufacturers of our product candidates may be unable to comply with these GMP requirements and with other FDA and foreign regulatory requirements. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any of our product candidates is compromised due to failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for such product candidate or successfully commercialize such product candidate, and we may be held liable for any injuries sustained as a result. Any of these factors could cause a delay in clinical developments, regulatory submissions, approvals or commercialization of our product candidates, entail higher costs or result in our being unable to effectively commercialize our product candidates. Furthermore, if we fail to obtain the required commercial quantities on a timely basis and at commercially reasonable prices, we may be unable to meet demand for our approved product candidates, if any, and would lose potential revenues.

We depend on collaborators to work with us to develop, manufacture and commercialize their and our product candidates.

We have a license agreement with United Therapeutics to use one of our proprietary technologies for an oral formulation of treprostinil diethanolamine, or treprostinil, for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. This oral formulation is currently being evaluated by United Therapeutics in Phase III trials for PAH. If United Therapeutics receives approval to market and sell this product candidate, we are entitled to receive single digit gross royalties based on worldwide net sales. We are also entitled to receive milestones and royalties for use of this formulation in other indications. If we materially breach any of our obligations under the license agreement, however, we could lose the potential to receive any future royalty payments thereunder, which could be financially significant to us.

In addition, we may enter into additional collaborations in the future. Our future collaboration agreements may have the effect of limiting the areas of research and development that we may pursue, either alone or in collaboration with third parties. Much of the potential revenues from these future collaborations may consist of contingent payments, such as payments for achieving development milestones and royalties payable on sales of developed products. The milestone and royalty revenues that we may receive under these collaborations will depend upon our collaborators' ability to successfully develop, introduce, market and sell new products. Future collaboration partners may fail to develop or effectively commercialize products using our product candidates or technologies because they, among other things:

- may change the focus of their development and commercialization efforts or may have insufficient resources to effectively develop our product candidates. Pharmaceutical and biotechnology companies historically have re-evaluated their development and commercialization priorities following mergers and consolidations, which have been common in recent years in these industries. The ability of some of our product candidates to reach their potential could be limited if our future collaborators decrease or fail to increase development or commercialization efforts related to those product candidates;

- may decide not to devote the necessary resources due to internal constraints, such as limited personnel with the requisite scientific expertise or limited cash resources, or the belief that other drug development programs may have a higher likelihood of obtaining marketing approval or may potentially generate a greater return on investment;

- may develop and commercialize, either alone or with others, drugs that are similar to or competitive with the product candidates that are the subject of their collaborations with us;

- may not have sufficient resources necessary to carry the product candidate through clinical development, marketing approval and commercialization;

- may fail to comply with applicable regulatory requirements;

- may not be able to obtain the necessary marketing approvals; or

- may breach or terminate their arrangement with us.

If collaboration partners fail to develop or effectively commercialize our product candidates for any of these reasons, we may not be able to replace the collaboration partner with another partner to develop and commercialize the product candidate under the terms of the collaboration. Further, even if we are able to replace the collaboration partner, we may not be able to do so on commercially favorable terms. As a result, the development and commercialization of the affected product candidate could be delayed, curtailed or terminated because we may not have sufficient financial resources or capabilities to continue development and commercialization of the product candidate on our own, which could adversely affect our results of operations.

We rely and will continue to rely on outsourcing arrangements for certain of our activities, including clinical research of our product candidates and manufacturing of our compounds and product candidates for our preclinical research and clinical trials.

We rely on outsourcing arrangements for some of our activities, including manufacturing, preclinical and clinical research, data collection and analysis. We may have limited control over these third parties and we cannot guarantee that they will perform their obligations in an effective and timely manner. Our reliance on third parties, including third-party CROs, and contract manufacturing organizations, or CMOs, entails risks including, but not limited to:

- non-compliance by third parties with regulatory and quality control standards;
- sanctions imposed by regulatory authorities if compounds supplied or manufactured by a third party supplier or manufacturer fail to comply with applicable regulatory standards;
- the possible breach of the agreements by the CROs or CMOs because of factors beyond our control or the insolvency of any of these third parties or other financial difficulties, labor unrest, natural disasters or other factors adversely affecting their ability to conduct their business; and
- termination or non-renewal of an agreement by the third parties, at a time that is costly or inconvenient for us, because of our breach of the manufacturing agreement or based on their own business priorities.

We do not own or operate manufacturing facilities for the production of any of our product candidates, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We currently depend on third-party contract manufacturers for all of our required raw materials, drug substance and drug product for our preclinical research and clinical trials. For SPN-538 and Epliga, we are currently relying on single suppliers for raw materials including drug substance and single manufacturers for the final product. If any of these vendors is unable to perform its obligations to us, including due to violations of the FDA's requirements, our ability to meet regulatory requirements or projected timelines and necessary quality standards for successful manufacturing of the various required lots of material for our development and commercialization efforts would be adversely affected. Further, if we were required to change vendors, it could result in delays in our regulatory approval efforts and significantly increase our costs. Accordingly, the loss of any of our current or future third-party manufacturers or suppliers could have a material adverse effect on our business, results of operations, financial condition and prospects.

We do not have any current contractual relationships for the manufacture of commercial supplies of any of our product candidates. In connection with any approval, we intend to enter into agreements with third-party contract manufacturers for the commercial production of those products. The number of third-party manufacturers with the expertise, required regulatory approvals and facilities to manufacture bulk drug substance on a commercial scale is limited. Therefore, we may not be able to enter into such arrangements with third-party manufacturers in a timely manner, on acceptable terms or at all. Failure to secure such contractual arrangements would harm the commercial prospects for our product candidates, our costs could increase and our ability to generate revenues could be delayed.

We have in-licensed or acquired a portion of our intellectual property necessary to develop certain of our psychiatry product candidates, and if we fail to comply with our obligations under any of these arrangements, we could lose such intellectual property rights.

We are a party to and rely on several arrangements with third parties, such as those with Afecta Pharmaceuticals, Inc., or Afecta, and Rune Healthcare Limited, or Rune, which give us rights to intellectual property that is necessary for the development of certain of our product candidates including SPN-810 and SPN-809, respectively. In addition, we may enter into similar arrangements in the future. Our current arrangements impose various development, royalty and other obligations on us.

If we materially breach these obligations or if Afecta or Rune fail to adequately perform their respective obligations, these exclusive arrangements could be terminated, which would result in our inability to develop, manufacture and sell products that are covered by such intellectual property.

Even if our product candidates receive regulatory approval in the United States, we or our collaborators may never receive approval to commercialize our product candidates outside of the United States.

In order to market any products outside of the United States, we must establish and comply with numerous and varying regulatory requirements of other jurisdictions regarding safety and efficacy. Approval procedures vary among jurisdictions and can involve product testing and administrative review periods different from, and greater than, those in the United States. The time required to obtain approval in other jurisdictions might differ from that required to obtain FDA approval. The regulatory approval process in other jurisdictions may include all of the risks detailed above regarding FDA approval in the United States as well as other risks. For example, legislation analogous to Section 505(b)(2) of the FDCA in the United States, which relates to the ability of an NDA applicant to use published data not developed by such applicant, may not exist in other countries. In territories where data is not freely available, we may not have the ability to commercialize our products without negotiating rights from third parties to refer to their clinical data in our regulatory applications, which could require the expenditure of significant additional funds.

In addition, regulatory approval in one jurisdiction does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory processes in others. Failure to obtain regulatory approvals in other jurisdictions or any delay or setback in obtaining such approvals could have the same adverse effects detailed above regarding FDA approval in the United States. As described above, such effects include the risks that any of our product candidates may not be approved for all indications requested, which could limit the uses of our product candidates and have an adverse effect on their commercial potential or require costly post-marketing studies.

Guidelines and recommendations published by various organizations can reduce the use of our product candidates.

Government agencies promulgate regulations and guidelines directly applicable to us and to our product candidates. In addition, professional societies, practice management groups, private health and science foundations and organizations involved in various diseases from time to time may also publish guidelines or recommendations to the health care and patient communities. Recommendations of government agencies or these other groups or organizations may relate to such matters as usage, dosage, route of administration and use of concomitant therapies. Recommendations or guidelines suggesting the reduced use of our product candidates or the use of competitive or alternative products that are followed by patients and health care providers could result in decreased use of our product candidates.

We are subject to uncertainty relating to payment or reimbursement policies which, if not favorable for our product candidates, could hinder or prevent our commercial success.

Our ability or our collaborators' ability to commercialize our product candidates, including SPN-538 and Epliga, successfully will depend in part on the coverage and reimbursement levels set by governmental authorities, private health insurers, managed care organizations and other third-party payors. As a threshold for coverage and reimbursement, third-party payors generally require that drug products have been approved for marketing by the FDA. Third-party payors also are increasingly challenging the effectiveness of and prices charged for medical products and services. Government authorities and these third-party payors have attempted to control costs, in some instances, by limiting coverage and the amount of reimbursement for particular medications or encouraging the use of

lower-cost generic AEDs. We cannot be sure that reimbursement will be available for any of the products that we develop and, if reimbursement is available, the level of reimbursement. Reduced or partial payment or reimbursement coverage could make our product candidates, including SPN-538 and Epliga, less attractive to patients and prescribing physicians. We also may be required to sell our product candidates at a discount, which would adversely affect our ability to realize an appropriate return on our investment in our product candidates or compete on price.

We expect that private insurers and managed care organizations will consider the efficacy, cost effectiveness and safety of our product candidates, including SPN-538 and Epliga, in determining whether to approve reimbursement for such product candidates and at what level. Because each third-party payor individually approves payment or reimbursement, obtaining these approvals can be a time consuming and expensive process that could require us to provide scientific or clinical support for the use of each of our product candidates separately to each third-party payor. In some cases it could take several months or years before a particular private insurer or managed care organization reviews a particular product, and we may ultimately be unsuccessful in obtaining coverage. Our competitors generally have larger organizations, as well as existing business relationships with third-party payors relating to their products. Our business would be materially adversely affected if we do not receive approval for reimbursement of our product candidates from private insurers on a timely or satisfactory basis. Our approved product candidates, if any, may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our product candidates on a profitable basis. Our business would also be adversely affected if private insurers, managed care organizations, the Medicare program or other reimbursing bodies or payors limit the indications for which our product candidates will be reimbursed to a smaller set than we believe they are effective in treating.

In some foreign countries, particularly Canada and the countries of Europe, the pricing of prescription pharmaceuticals is subject to strict governmental control. In these countries, pricing negotiations with governmental authorities can take six to 12 months or longer after the receipt of regulatory approval and product launch. To obtain favorable reimbursement for the indications sought or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies. If reimbursement for our product candidates is unavailable in any country in which reimbursement is sought, limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be materially harmed.

In addition, many managed care organizations negotiate the price of products and develop formularies which establish pricing and reimbursement levels. Exclusion of a product from a formulary can lead to its sharply reduced usage in the managed care organization's patient population. If our product candidates are not included within an adequate number of formularies or adequate payment or reimbursement levels are not provided, or if those policies increasingly favor generic products, our market share and gross margins could be negatively affected, which would have a material adverse effect on our overall business and financial condition.

We expect to experience pricing pressures due to the potential healthcare reforms discussed elsewhere in this prospectus, as well as the trend toward programs aimed at reducing health care costs, the increasing influence of health maintenance organizations and additional legislative proposals.

We face potential product liability exposure, and, if successful claims are brought against us, we may incur substantial liabilities.

The use of our product candidates in clinical trials and the sale of any of our product candidates for which we may obtain marketing approval expose us to the risk of product liability claims. Product liability claims might be brought against us by consumers, healthcare providers or others selling or otherwise coming into contact with our product candidates. If we cannot successfully defend ourselves

against product liability claims, we could incur substantial liabilities. In addition, product liability claims may result in:

- decreased demand for any product candidate that has received approval and is being commercialized;
- impairment of our business reputation and exposure to adverse publicity;
- withdrawal of bioequivalence and/or clinical trial participants;
- initiation of investigations by regulators;
- costs of related litigation;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- loss of revenues; and
- the inability to commercialize any of our product candidates for which we obtain marketing approval.

Our product liability insurance coverage for our clinical trials is limited to $5 million per occurrence, and $10 million in the aggregate, and covers bodily injury and property damage arising from our clinical trials, subject to industry-standard terms, conditions and exclusions. Our insurance coverage may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses. If and when we obtain marketing approval for any of our product candidates, we intend to expand our insurance coverage to include the sale of commercial products; however, we may be unable to obtain this product liability insurance on commercially reasonable terms. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Our failure to successfully develop and market product candidates would impair our ability to grow.

As part of our growth strategy, we intend to develop and market additional product candidates. We are pursuing various therapeutic opportunities through our pipeline. We may spend several years completing our development of any particular current or future internal product candidate, and failure can occur at any stage. The product candidates to which we allocate our resources may not end up being successful. In addition, because our internal research capabilities are limited, we may be dependent upon pharmaceutical companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify, select, discover and acquire promising pharmaceutical product candidates and products.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing and sales resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

In addition, future acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- incurrence of substantial debt, dilutive issuances of securities or depletion of cash to pay for acquisitions;
- higher than expected acquisition and integration costs;
- difficulty in combining the operations and personnel of any acquired businesses with our operations and personnel;
- increased amortization expenses;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to motivate key employees of any acquired businesses.

Further, any product candidate that we acquire may require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to risks of failure typical of pharmaceutical product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities.

Healthcare reform measures could hinder or prevent our product candidates' commercial success.

The U.S. government and other governments have shown significant interest in pursuing healthcare reform. Any government-adopted reform measures could adversely impact the pricing of healthcare products and services in the United States or internationally and the amount of reimbursement available from governmental agencies or other third party payors. The continuing efforts of the U.S. and foreign governments, insurance companies, managed care organizations and other payors of health care services to contain or reduce healthcare costs may adversely affect our ability to set prices for any approved product candidate which we believe are fair, and our ability to generate revenues and achieve and maintain profitability.

In both the United States and some foreign jurisdictions, there have been a number of legislative and regulatory proposals and initiatives to change the health care system in ways that could affect our ability to sell any approved product candidate profitably. Some of these proposed and implemented reforms could result in reduced reimbursement rates for our potential products, which would adversely affect our business strategy, operations and financial results. For example, in March 2010, President Obama signed into law a legislative overhaul of the U.S. healthcare system, known as the Patient Protection and Affordable Care Act of 2010, as amended by the Healthcare and Education Affordability Reconciliation Act of 2010. This law, which we refer to as the PPACA, may have far reaching consequences for biopharmaceutical companies like us. As a result of this new legislation, substantial changes could be made to the current system for paying for healthcare in the United States, including changes made in order to extend medical benefits to those who currently lack insurance coverage. Extending coverage to a large population could substantially change the structure of the health insurance system and the methodology for reimbursing medical services and drugs. These structural changes could entail modifications to the existing system of private payors and government programs, such as Medicare and Medicaid, creation of a government-sponsored healthcare insurance source, or some combination of both, as well as other changes. Restructuring the coverage of medical care in the United States could impact the reimbursement for prescribed drugs, including our product

candidates. If reimbursement for our approved product candidates, if any, is substantially less that we expect in the future, or rebate obligations associated with them are substantially increased, our business could be materially and adversely impacted.

In September 2007, the Food and Drug Administration Amendments Act of 2007 was enacted, giving the FDA enhanced post-marketing authority, including the authority to require post-marketing studies and clinical trials, labeling changes based on new safety information, and compliance with risk evaluations and mitigation strategies approved by the FDA. The FDA's exercise of this authority could result in delays or increased costs during product development, clinical trials and regulatory review, increased costs to assure compliance with post-approval regulatory requirements, and potential restrictions on the sale and/or distribution of any approved product candidates.

Future federal and state proposals and health care reforms could limit the prices that can be charged for the product candidates that we develop and may further limit our commercial opportunity. Our results of operations could be materially adversely affected by the PPACA by the possible effect of such current or future legislation on amounts that private insurers will pay and by other health care reforms that may be enacted or adopted in the future.

We will need to increase the size of our organization, and we may experience difficulties in managing growth.

We will need to manage our anticipated growth and increased operational activity. Our personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively execute our growth strategy requires that we:

- manage our regulatory approval trials effectively;
- manage our internal development efforts effectively while complying with our contractual obligations to licensors, licensees, contractors, collaborators and other third parties;
- develop internal sales and marketing capabilities;
- commercialize our product candidates;
- improve our operational, financial and management controls, reporting systems and procedures; and
- attract and motivate sufficient numbers of talented employees.

This future growth could place a strain on our administrative and operational infrastructure and may require our management to divert a disproportionate amount of its attention away from our day-to-day activities. We may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. We may not be able to make improvements to our management information and control systems in an efficient or timely manner and may discover deficiencies in existing systems and controls. If our management is unable to effectively manage our expected growth, our expenses may increase more than expected, our ability to generate or increase our revenues could be reduced and we may not be able to implement our business strategy. Our future financial performance and our ability to compete effectively will depend, in part, on our ability to effectively manage any future growth.

We may not be able to manage our business effectively if we are unable to attract and motivate key personnel or if we lose any of our current management team.

We may not be able to attract or motivate qualified management and scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology,

pharmaceutical and other businesses. Our industry has experienced a high rate of turnover of management personnel in recent years. If we are not able to attract and motivate necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our objectives.

We are highly dependent on the development, regulatory, commercial and financial expertise of our management, particularly Jack A. Khattar, our President and Chief Executive Officer. We do not have any employment agreements with any member of our senior management team except Mr. Khattar. Although no member of our management team has informed us to date that he or she intends to resign or retire, if we lose any members of our management team in the future, we may not be able to find suitable replacements in a timely fashion, if at all, which may serve to impede the achievement of our research, development and commercialization objectives. In addition to the competition for personnel, the greater Washington D.C. metropolitan area in particular is characterized by a high cost of living. As such, we could have difficulty attracting experienced personnel to our company and may be required to expend significant financial resources in our employee recruitment efforts.

We also have scientific and clinical advisors who assist us in formulating our product development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us, or may have arrangements with other companies to assist in the development of products that may compete with ours.

We will need to obtain FDA approval of any proposed product names, and any failure or delay associated with such approval may adversely impact our business.

Any name we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the U.S. Patent and Trademark Office. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. The FDA may object to any product name we submit if it believes the name inappropriately implies medical claims. We have in the past been required to change a proposed product name. If the FDA objects to any of our proposed product names, we may be required to adopt an alternative name for our product candidates. If we adopt an alternative name, we would lose the benefit of our existing trademark applications for such product candidate, and may be required to expend significant additional resources in an effort to identify a suitable product name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

If we fail to comply with healthcare regulations, we could face substantial penalties and our business, operations and financial condition could be adversely affected.

As a manufacturer of pharmaceuticals, certain federal and state healthcare laws and regulations pertaining to fraud and abuse and patients' rights are and will be applicable to our business. We could be subject to healthcare fraud and abuse and patient privacy regulation by both the federal government and the states in which we conduct our business. The regulations include:

- the federal healthcare program anti-kickback law, which prohibits, among other things, persons from soliciting, receiving or providing remuneration, directly or indirectly, to induce either the referral of an individual, for an item or service or the purchasing or ordering of a good or service, for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs;

- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent, and which may apply to entities like us which provide coding and billing advice to customers;

- the federal Health Insurance Portability and Accountability Act of 1996, which prohibits executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters and which also imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information;

- the federal transparency requirements under the PPACA requires manufacturers of drugs, devices, biologics, and medical supplies to report to the Department of Health and Human Services information related to physician payments and other transfers of value and physician ownership and investment interests;

- the FDCA, which among other things, strictly regulates drug product marketing, prohibits manufacturers from marketing drug products for off-label use and regulates the distribution of drug samples; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payor, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by federal laws, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations could be costly. If our operations are found to be in violation of any of the laws described above or any governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security and fraud laws may prove costly.

Our business involves the use of hazardous materials, and we must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our activities and our third-party manufacturers' and suppliers' activities involve the controlled storage, use and disposal of hazardous materials owned by us. We and our manufacturers and suppliers are subject to federal, state, city and local laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. Although we believe that the safety procedures we use for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of an accident, local, city, state or federal authorities may curtail the use of these materials and interrupt our business operations, including our commercialization and research and development efforts. Although we believe that the safety procedures utilized by our third-party manufacturers for handling and disposing of these materials generally comply with the standards prescribed by these laws and regulations, we cannot guarantee that this is the case or eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources. We do not currently maintain biological or hazardous materials insurance coverage.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, competitors might be able to enter the market earlier than would otherwise have been the case.

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

We employ individuals who were previously employed at other pharmaceutical companies, including our competitors or potential competitors and, as such, we may be subject to claims that we or these employees have used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Such an event could cause interruption of our operations. For example, the loss of trial data from completed or ongoing bioequivalence and/or clinical trials for our product candidates could result in delays in our regulatory approval efforts and significantly increase our costs. To the extent that any disruption or security breach were to result in a loss of or damage to our data, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of our product candidates could be delayed.

Provisions in our agreement with Shire impose restrictive covenants on us, which could limit our ability to operate effectively in the future.

In 2005, we purchased substantially all of the assets of Shire Laboratories Inc. Pursuant to this agreement, we agreed to perpetually refrain from engaging in any research, formulation development, analytical testing, manufacture, technology assessment or oral bioavailability screening that relate to five specific drug compounds (amphetamine, carbamazepine, guanfacine, lanthanum and mesalamine) and any derivative thereof. In addition, we have agreed not to provide any services to, license any intellectual property rights to, or otherwise perform any work for certain pharmaceutical companies primarily engaged in the development and marketing of generic products through 2012. Although these various restrictions and covenants on us do not currently impact our product candidates or business, they could in the future limit or delay our ability to take advantage of business opportunities that may relate to such compounds or such companies.

Risks Related to Our Finances and Capital Requirements

We have incurred significant operating losses since our inception and anticipate that we will incur continued losses for the foreseeable future.

In recent years, we have focused primarily on developing our current product candidates, with the goal of supporting regulatory approval for these product candidates. We have financed our operations primarily through private placements of convertible preferred stock, our collaboration and license

arrangements, and non-recourse debt that is secured by our royalty rights related to sales of Oracea under our agreement with Galderma and our royalty rights related to sales of Sanctura XR under our agreement with Allergan. We have incurred significant operating losses since our inception in 2005. We incurred net losses of approximately $17.3 million and $33.5 million in the years ended December 31, 2007 and 2008, respectively, and approximately $29.9 million in the nine months ended September 30, 2010. We incurred net income of approximately $0.5 million in the year ended December 31, 2009. As of September 30, 2010, we had an accumulated deficit of approximately $85.2 million. Substantially all of our operating losses resulted from costs incurred in connection with our development programs and from general and administrative costs associated with our operations. For example, the expenses that we have incurred relating to the research and development of SPN-538 and Epliga from inception to September 30, 2010 are approximately $18.2 million and $35.4 million, respectively. We expect our research and development costs to continue to be substantial and to increase with respect to our product candidates as we advance those product candidates through preclinical studies, clinical trials, manufacturing scale-up and other pre-approval activities. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future.

Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders' equity and working capital. Furthermore, upon the closing of this offering, we expect to incur additional costs associated with operating as a public company. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when, or if, we will become profitable.

We may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.

Developing product candidates, conducting clinical trials, establishing manufacturing relationships and marketing drugs are expensive and uncertain processes. Although it is difficult to predict future liquidity requirements, we believe that the net proceeds from this offering, together with our existing unrestricted cash, cash equivalents and marketable securities and anticipated future product revenues will be sufficient to fund our operations for at least the next months. We may need to obtain additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. If sufficient funds on acceptable terms are not available when needed, we could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of our development programs, which may have a material adverse effect on our business, results of operations and financial condition.

In addition, unforeseen circumstances may arise, or our strategic imperatives could change, causing us to consume capital significantly faster than we currently anticipate, requiring us to seek to raise additional funds sooner than expected. We have no committed external sources of funds.

The amount and timing of our future funding requirements will depend on many factors, including, but not limited to:

- the rate of progress and cost of our trials and other product development programs for our product candidates;
- the costs and timing of in-licensing additional product candidates or acquiring other complementary companies;
- the timing of any regulatory approvals of our product candidates;
- the costs of establishing sales, marketing and distribution capabilities; and
- the status, terms and timing of any collaborative, licensing, co-promotion or other arrangements.

Additional financing may not be available when we need it or may not be available on terms that are favorable to us. In addition, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. If adequate funds are not available to us on a timely basis, or at all, we may be required to delay, reduce the scope of or eliminate one or more of our development programs or our commercialization efforts.

We have never generated any revenues from the sales of our own products, and we may never achieve or maintain profitability.

Our ability to become profitable depends upon our ability to generate revenues from sales of our product candidates. To date, we have not generated any revenues from sales of our own product candidates and have incurred significant operating losses. Our historical revenues have been generated through fees for development services and payment for the achievement of specified development, regulatory and sales milestones, as well as royalty, on product sales of Oracea, Sanctura XR and Intuniv licensed products. We have non-recourse debt outstanding that is secured by our royalty rights related to sales of Oracea under our agreement with Galderma and our royalty rights related to sales of Sanctura XR under our agreement with Allergan and we expect that all or substantially all of our future royalty revenues under these agreements will be used to satisfy this debt. In May 2009, we received a one-time payment of approximately $36.9 million from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv. Accordingly, we will not receive any future royalties payments from Shire plc with respect to the net sales of Intuniv.

Our ability to generate product revenues is dependent on our ability to receive regulatory approval of our product candidates, including SPN-538 and Epliga, and to successfully commercialize these products. Our ability to successfully commercialize our product candidates depends on, among other things:

- our successful completion of ongoing and planned bioequivalence and clinical trials for our product candidates;
- our obtaining regulatory approvals for our product candidates, including SPN-538 and Epliga; and
- if regulatory approvals are received, our manufacturing of commercial quantities of our product candidates at acceptable cost levels.

Even if any of our product candidates are approved for commercial sale, we anticipate incurring significant costs associated with commercialization. It is possible that we will never have sufficient product sales revenues to achieve profitability.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Prior to commercializing any of our product candidates, we expect that any revenues we generate will fluctuate from quarter to quarter as a result of the timing and amount of development and milestones and royalty revenues received under our collaboration license agreements, as our revenues from these arrangements are principally based on the achievement of clinical and commercial milestones outside of our control. To date, we have monetized the future royalties due to us from our existing license agreements for Oracea, Sanctura XR and Intuniv.

Once we commercialize one or more of our product candidates, our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our development programs;

- the success of our bioequivalence and clinical trials through all phases of clinical development;
- any delays in regulatory review and approval of product candidates in clinical development;
- potential side effects of our future products that could delay or prevent commercialization or cause an approved drug to be taken off the market;
- any intellectual property infringement lawsuit in which we may become involved;
- our ability to establish an effective sales and marketing infrastructure;
- our dependency on third-party manufacturers to supply or manufacture our product candidates;
- competition from existing products or new products that may emerge;
- regulatory developments affecting our product candidates;
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements;
- the achievement and timing of milestone payments under our existing collaboration and license agreements; and
- the level of market acceptance for any approved product candidates and underlying demand for that product and wholesalers' buying patterns.

Due to the various factors mentioned above, and others, the results of any prior quarterly periods should not be relied upon as an indication of our future operating performance. If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially.

Raising additional funds through borrowing or licensing arrangements may restrict our operations or require us to relinquish proprietary rights.

We do not expect to be profitable in the near-term, if at all. Accordingly, we may need to raise additional funds through equity offerings, debt financings and/or payments under new or existing licenses and research and development collaborations. If we seek to raise capital through debt financing, if available, such transactions would result in increased fixed payment obligations and typically require covenants that restrict operating activities. Such restricted operating activities may include restrictions on our ability to take specific actions such as incurring additional debt, making capital expenditures or declaring dividends. Any borrowings under debt financing will need to be repaid, which creates additional financial risk, particularly if our business or prevailing financial market conditions are not conducive to paying-off or refinancing our outstanding debt obligations at maturity.

If we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates or technologies, or to grant licenses on terms that are not favorable to us. If adequate funds are not available when and if needed, our ability to achieve profitability or to respond to competitive pressures would be significantly limited, and we may be required to delay, significantly curtail or eliminate one or more of our programs.

We have operated as a private company and have no experience attempting to comply with public company obligations. Attempting to comply with these requirements will increase our costs and require additional management resources, and we still may fail to comply.

We will face increased legal, accounting, administrative and other costs and expenses as a public company. Compliance with the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act of 2010, as well as

rules of the Securities and Exchange Commission and Nasdaq, for example, will result in significant initial cost to us as well as ongoing increases in our legal, audit and financial compliance costs. The Exchange Act will require, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage.

As a public company, we expect to become subject to Section 404 of the Sarbanes-Oxley Act relating to internal controls over financial reporting. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. Implementing any appropriate changes to our internal controls may require specific compliance training for our directors, officers and employees, entail substantial costs to modify our existing accounting systems, and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the adequacy of our internal controls, and any failure to maintain that adequacy, or consequent inability to produce accurate consolidated financial statements or other reports on a timely basis, could increase our operating costs and could materially impair our ability to operate our business. Although we have not identified any material weaknesses in our internal controls over financial reporting to date, we cannot assure you that our internal controls over financial reporting will prove to be effective.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404 of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our consolidated financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

Our ability to use net operating loss and tax credit carryforwards and certain built-in losses to reduce future tax payments is limited by provisions of the Internal Revenue Code, and may be subject to further limitation as a result of the transactions contemplated by this offering.

Section 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, contain rules that limit the ability of a company that undergoes an ownership change, which is generally any change in ownership of more than 50% of its stock over a three-year period, to utilize its net operating loss and tax credit carryforwards and certain built-in losses recognized in years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders owning directly or indirectly 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. Generally, if an ownership change occurs, the yearly taxable income limitation on the use of net operating loss and tax credit carryforwards and certain built-in losses is equal to the product of the applicable long term tax exempt rate and the value of the

company's stock immediately before the ownership change. We may be unable to offset our taxable income with losses, or our tax liability with credits, before such losses and credits expire and therefore would incur larger federal income tax liability.

In addition, it is possible that the transactions described in this offering, either on a standalone basis or when combined with future transactions, including issuances of new shares of our common stock, will cause us to undergo one or more additional ownership changes. In that event, we generally would not be able to use our pre-change loss or credit carryovers or certain built-in losses prior to such ownership change to offset future taxable income in excess of the annual limitations imposed by Sections 382 and 383 and those attributes already subject to limitations as a result of our prior ownership changes may be subject to more stringent limitations. As of December 31, 2009, we had approximately $54.1 million of federal net operating loss carryforwards. We also had federal and state research and development tax credit carryforwards of approximately $3.1 million available to offset future taxable income. These federal and state net operating loss and federal and state tax credit carryforwards will begin to expire at various dates beginning in 2025, if not utilized. We have not completed a study to assess whether an ownership change has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such study. Accordingly, our ability to utilize the aforementioned carryforwards and tax credits may be limited. As a result, we may not be able to take full advantage of these carryforwards or tax credits for federal and state tax purposes.

Royalties under our agreement with Endo Pharmaceuticals and Galderma may not be sufficient for our subsidiary to meet its payment obligations under the non-recourse notes.

While our subsidiary, TCD Royalty Sub LLC, or Royalty Sub, will be entitled to receive the royalties related to the sales of Santura XR under our agreement with Endo Pharmaceuticals as successor-in-interest to Indevus Pharmaceuticals, Inc. and its marketing partner, Allergan, Inc., and the royalties related to the sales of Oracea under our agreement with Galderma Pharma S.A., as successor-in-interest to CollaGenex Pharmaceuticals, Inc., such royalties may not be sufficient for it to meet its payment obligations under the non-recourse notes issued by Royalty Sub. As a result, Royalty Sub will be dependent on Allergan's and Galderma's respective sales and marketing efforts to receive royalties in sufficient amounts to meet its payment obligations. Any royalty modifications could result in Royalty Sub receiving significantly reduced or no royalties under the license agreements with Endo Pharmaceuticals and Galderma Pharma S.A., which would delay repayment of the non-recourse notes.

In certain circumstances we could be required to pay damages if we fail to perform our obligations in connection with the non-recourse notes issued by Royalty Sub and we may lose the potential to receive future royalty payments after the non-recourse notes are repaid in full.

In April 2008, Royalty Sub issued $75.0 million in aggregate principal amount of non-recourse notes, which are secured principally by royalty payments from future sales of Sanctura XR and Oracea, and by a pledge by us of all the outstanding equity interest in Royalty Sub. If the royalty payments from Sanctura XR and Oracea are insufficient to repay the non-recourse notes or if an event of default occurs under the indenture governing the non-recourse notes, in certain circumstances, the royalty payments and our equity interest in Royalty Sub may be foreclosed upon and we would lose the potential to receive any future royalty payments, which could be financially significant after the non-recourse notes are repaid in full.

In addition, if we fail to perform our obligations under the purchase and sale agreement with Royalty Sub we may be required to indemnify Royalty Sub for damages arising due to such failure. For example, pursuant to this agreement, we have an obligation to use commercially reasonable efforts to preserve, maintain, and maximize the commercial value of our licensed patents covering Sanctura XR and Oracea, which includes the obligation to pay patent office maintenance fees in order to keep these

patents in force. If we fail to pay such patent office maintenance fees, these patents may expire and the royalty stream from such patents may terminate. In such a scenario, we may be called upon to pay damages to Royalty Sub due to the loss of patent licensing revenue that Royalty Sub would have received from the sale of Santura XR and Oracea.

Risks Related to Securities Markets and Investment in Our Stock

The concentration of our capital stock ownership with our founders, directors, executives, employees and current holders of our preferred stock (and their affiliates) will limit your ability to influence certain corporate matters.

Upon completion of this offering and after giving effect to the conversion of the Series A convertible preferred stock into common stock, the current holders of our preferred stock will, in the aggregate, beneficially own % of our outstanding common stock (or approximately % if the underwriters exercise their over-allotment option in full). As a result, these stockholders will collectively be able to significantly influence and may be able to control all matters requiring approval of our stockholders, including the election of directors and approval of significant corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets. The concentration of ownership may delay, prevent or deter a change in control of our company even when such a change may be in the best interests of some stockholders, impede a merger, consolidation, takeover or other business combination involving us, or could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or our assets and might adversely affect the prevailing market price of our common stock. Participation in this offering by existing holders of our Series A convertible preferred stock will further concentrate voting rights and may negatively impact liquidity for shares of our common stock.

Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control which could negatively impact the market price of our common stock.

Provisions in our certificate of incorporation and bylaws, as amended and restated upon the completion of this offering, may have the effect of delaying or preventing a change of control. These provisions include the following:

- Our board of directors is divided into three classes serving staggered three-year terms, such that not all members of the board will be elected at one time. This staggered board structure prevents stockholders from replacing the entire board at a single stockholders' meeting.

- Our board of directors has the right to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors.

- Our board of directors may issue, without stockholder approval, shares of preferred stock. The ability to authorize preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us.

- Stockholders must provide advance notice to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting. Furthermore, stockholders may only remove a member of our board of directors for cause. These provisions may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect such acquiror's own slate of directors or otherwise attempting to obtain control of our company.

- Our stockholders may not act by written consent. As a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions outside of a stockholders' meeting.

- Special meetings of stockholders may be called only by the chairman of our board of directors, our chief executive officer, our president or a majority of our board of directors. As a result, a holder, or holders, controlling a majority of our capital stock would not be able to call a special meeting.

- A majority of the outstanding shares of common stock are required to amend our certificate of incorporation and a super majority (75%) of the outstanding shares of common stock are required to amend our by-laws, which make it more difficult to change the provisions described above.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our certificate of incorporation, our bylaws and in the Delaware General Corporation Law could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors.

There may not be a viable public market for our common stock.

Prior to this offering, there has been no public market for our common stock, and a regular trading market may not develop and continue after this offering. Furthermore, the market price of our common stock may decline below the initial public offering price. The initial public offering price has been determined through negotiations between us and the representatives of the underwriters and may not be indicative of the market price of our common stock following this offering. Among the factors considered in such negotiations were prevailing market conditions, certain of our financial information, market valuations of other companies that we and the representatives of the underwriters believed were comparable to us, estimates of our business potential and the present state of our business. See "Underwriting" for additional information.

If you purchase shares of our common stock, you may not be able to resell those shares at or above the initial public offering price. We cannot predict the extent to which investor interest in our company will lead to the development of an active trading market on the Nasdaq Global Market or otherwise or how liquid that market might become. An active public market for our common stock may not develop or be sustained after the offering. If an active public market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at a price that is attractive to you, or at all. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic partnerships or acquire companies or products, product candidates or technologies by using our shares of common stock as consideration.

As a new investor, you will experience immediate and substantial dilution in the net tangible book value of your shares.

The initial public offering price of our common stock in this offering is considerably more than the net tangible book value per share of our common stock. Investors purchasing shares of common stock in this offering will pay a price that substantially exceeds the value of our tangible assets after subtracting liabilities. As a result, investors will, as of September 30, 2010:

- incur immediate dilution of $ per share of common stock, based on the initial public offering price of $ per share of common stock; and

- contribute % of the total amount invested to date to fund our company based on the initial offering price of $ per share of common stock, but will own only % of the outstanding shares of common stock after the offering.

To the extent outstanding stock options are exercised, there will be further dilution to new investors.

As of September 30, 2010, we had options to purchase 1,729,458 shares of common stock outstanding, with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.48 per share. Upon the vesting of each of these options, the holder may exercise his or her options, which would result in further dilution to investors.

The price of our common stock may fluctuate substantially.

Following this offering, the market price for our common stock is likely to be volatile, in part because our common stock has not been previously traded publicly. In addition, the market price of our common stock may fluctuate significantly in response to a number of factors, including:

- plans for, progress in and results from clinical trials of our product candidates generally;
- the results from our bioequivalence trials for SPN-538 and our bioequivalence and/or clinical trials, including our current and planned Phase III clinical trials for Epliga;
- FDA or international regulatory actions, including actions on regulatory applications for any of our product candidates;
- the commercial performance of any of our product candidates that receive marketing approval;
- announcements of new products, services or technologies, commercial relationships, acquisitions or other events by us or our competitors;
- market conditions in the pharmaceutical and biotechnology sectors;
- fluctuations in stock market prices and trading volumes of similar companies;
- variations in our quarterly operating results;
- changes in accounting principles;
- litigation or public concern about the safety of our potential products;
- actual and anticipated fluctuations in our quarterly operating results;
- deviations in our operating results from the estimates of securities analysts;
- additions or departures of key personnel;
- sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;
- any third-party coverage and reimbursement policies for our product candidates, and
- discussion of us or our stock price in the financial or scientific press or in online investor communities.

The realization of any of the risks described in these "Risk Factors" could have a dramatic and material adverse impact on the market price of our common stock. In addition, class action litigation has often been instituted against companies whose securities have experienced periods of volatility. Any such litigation brought against us could result in substantial costs and a diversion of management attention, which could hurt our business, operating results and financial condition.

Our management team may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a significant return, if any.

The net proceeds from this offering will be used to fund the continued development, commercialization and research and development of our product candidates and other general corporate purposes. Because of the number and variability of factors that will determine our use of the proceeds from the offering, their ultimate use may vary substantially from their currently intended use. You will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds may be used for corporate purposes that do not

increase our operating results or market value. Until the net proceeds are used, they may be placed in investments that do not produce significant income or investments that lose value. For a further description of our intended use of the proceeds of this offering, see "Use of Proceeds."

Future sales of our common stock may depress our stock price.

While we do not currently anticipate making additional offers of common stock, such sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock and impair out ability to raise adequate capital through the sale of additional equity securities. Immediately after this offering, we will have outstanding shares of common stock, based on the number of outstanding shares of common stock as of September 30, 2010 and after giving effect to the conversion of shares of our preferred stock outstanding as of September 30, 2010 into shares of our common stock at the completion of this offering. Of these outstanding shares, shares are being sold in this offering and will be freely tradable immediately after this offering, except for shares purchased by affiliates, and the remaining shares may be sold upon expiration of lock-up agreements 180 days after the date of this offering. In addition, as of September 30, 2010, we had outstanding options to purchase 1,729,458 shares of common stock that, if exercised, will result in these additional shares becoming available for sale upon expiration of the lock-up agreements. A large portion of these shares and options are held by a small number of persons and investment funds. Moreover, after this offering, the holders of shares of common stock will have rights, subject to some conditions, to require us to file registration statements covering the shares they currently hold, or to include these shares in registration statements that we may file for ourselves or other stockholders.

We also intend to register all common stock that we may issue under our 2005 Stock Plan. Effective upon the closing of this offering, an aggregate of shares of our common stock will be reserved for future issuance under this plan. Once we register these shares, which we plan to do shortly after the closing of this offering, they can be freely sold in the public market upon issuance, subject to the lock-up agreements referred to above. If a large number of these shares are sold in the public market, the sales could reduce the trading price of our common stock. See "Shares Eligible for Future Sale" for a more detailed description of sales that may occur in the future.

We have never paid dividends on our capital stock, and because we do not anticipate paying any cash dividends in the foreseeable future, capital appreciation, if any, of our common stock will be your sole source of gain on an investment in our common stock.

We have paid no cash dividends on any of our classes of capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

If securities or industry analysts do not publish research or reports or publish unfavorable research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our company, the trading price for our stock would be negatively impacted. In the event we obtain securities or industry analyst coverage, if one or more of the analysts who covers us downgrades our stock, our stock price would likely decline. If one or more of these analysts ceases to cover us or fails to regularly publish reports on us, interest in our stock could decrease, which could cause our stock price or trading volume to decline.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections titled "Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," contains forward-looking statements. Forward-looking statements convey our current expectations or forecasts of future events. All statements contained in this prospectus other than statements of historical fact are forward-looking statements. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "seek," "anticipate," "should," "could," "would," "potential," or the negative of those terms and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. These forward-looking statements include, among other things, statements about:

- our ability to achieve profitability;
- the implementation of our corporate strategy;
- our future financial performance and projected expenditures;
- our ability to enter into future collaborations with pharmaceutical companies and academic institutions or to obtain funding from government agencies;
- our product research and development activities, including the timing and progress of our clinical trials, and projected expenditures;
- our ability to receive, and the timing of any receipt of, regulatory approvals to develop and commercialize our product candidates;
- our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;
- our expectations regarding federal, state and foreign regulatory requirements;
- the therapeutic benefits, effectiveness and safety of our product candidates;
- the accuracy of our estimates of the size and characteristics of the markets that may be addressed by our product candidates;
- our ability to increase our manufacturing capabilities for our product candidates;
- our projected markets and growth in markets;
- our product formulations and patient needs and potential funding sources;
- our staffing needs;
- our use of the proceeds from this offering; and
- our plans for sales and marketing.

Any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in "Risk Factors" and elsewhere in this prospectus. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur as contemplated, and actual results could differ materially from those anticipated or implied by the forward-looking statements.

You should not unduly rely on these forward-looking statements, which speak only as of the date of this prospectus. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, read this prospectus and the documents that we reference in this prospectus and have filed with the Securities and Exchange Commission as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from any future results expressed or implied by these forward-looking statements. You should also review the factors and risks we describe in the reports we will file from time to time with the Securities and Exchange Commission after the date of this prospectus. See "Where You Can Find Additional Information."

USE OF PROCEEDS

We estimate that we will receive net proceeds from the sale of shares of our common stock in this offering of approximately $, based upon an assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this preliminary prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds to us from this offering by $ million, assuming that the number of shares offered by us, as set forth on the cover page of this preliminary prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to fund our clinical trials, to fund operations, and to provide working capital. We intend to use the net proceeds of this offering for general corporate purposes including to fund the development and commercialization of SPN-538 and Epliga, as well as development of our other product candidates, general and administrative expenses, working capital, prosecution and maintenance of our intellectual property and the potential investment in or acquisition of technologies or products that complement our business. We have no current agreements or commitments with respect to such investment or acquisition.

As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds from this offering. The amounts and timing of our actual expenditures may vary significantly from our expectations depending upon numerous factors, including the progress of our research, development and commercialization efforts, the progress of our clinical trials, and our operating costs and capital expenditures. Accordingly, we will retain the discretion to allocate the net proceeds of this offering among the identified uses described above, and we reserve the right to change the allocation of the net proceeds among the uses described above as a result of contingencies such as the progress and results of our clinical trials and our research and development activities, the results of our commercialization efforts, competitive developments and our manufacturing requirements.

Pending use of proceeds from this offering, we intend to invest the proceeds in a variety of capital preservation investments, including short-term, investment-grade, interest-bearing instruments.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock and we do not currently anticipate declaring or paying cash dividends on our capital stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance operations. Additionally, our ability to pay dividends on our common stock is limited by restrictions on the ability of our subsidiaries and us to pay dividends or make distributions, including restrictions under the terms of the agreements governing our indebtedness. For additional information, see "Management's Discussion and Analysis of Financial Condition and Results of Operations." Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash and capitalization as of September 30, 2010:

- on an actual basis;
- on a pro forma basis, reflecting the conversion of all of our preferred stock into an aggregate of 49,000,000 shares of common stock upon the closing of this offering; and
- on a pro forma as adjusted basis to further reflect our receipt of the estimated net proceeds from our sale of shares of common stock offered hereby at an assumed initial public offering price of $ per share, the mid-point of the price range reflected on the cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table in conjunction with the sections of this prospectus entitled "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and with our consolidated financial statements and related notes appearing elsewhere in this prospectus.

	As of September 30, 2010		
	Actual	Pro Forma	Pro Forma as Adjusted(1)
	(unaudited)		
	(in thousands of dollars, except share data)		
Balance Sheet Data:			
Unrestricted cash and cash equivalents and marketable securities	$ 45,822	$ 45,822	$
Restricted cash and cash equivalents and marketable securities	1,680	1,680	
Non-recourse Notes	$ 75,000	$ 75,000	$
Redeemable Series A convertible preferred stock, $0.001 par value—49,000,000 shares authorized, issued and outstanding, actual; none, pro forma and pro forma as adjusted	49	—	—
Stockholders' deficit:			
Common stock, $0.001 par value—62,000,000 shares authorized, 6,371,061 shares issued and outstanding, actual;	6	55	
Additional paid-in capital	49,238	49,238	
Accumulated deficit	(85,210)	(85,210)	
Total stockholders' deficit	(35,917)	(35,917)	
Total capitalization	$ 39,083	$ 39,083	$

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the price range reflected on the cover page of this prospectus, would increase (decrease) each of additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) each of additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the assumed initial public offering price remains the same.

The table above does not include:

- 1,729,458 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2010 at a weighted average exercise price of $0.48 per share;
- 411,765 shares of common stock remaining to vest under a restricted stock award; and
- 2,487,716 additional shares of common stock reserved for future issuance under our 2005 Stock Plan.

DILUTION

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

Our net tangible book value as of , 2010 was approximately $, or $ per share of common stock. Net tangible book value per share is equal to our total tangible assets minus total liabilities, all divided by the number of shares of common stock outstanding as of September 30, 2010.

Our pro forma net tangible book value per share as of , 2010 was approximately $ per share. Pro forma net tangible book value per share gives effect to the conversion of all outstanding shares of our preferred stock as of into shares of our common stock, upon the closing of this offering.

After giving effect to the sale of the shares of common stock we are offering based on an assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this prospectus, less underwriting discounts and commissions and our estimated offering expenses, our pro forma as adjusted net tangible book value as of , 2010 would have been approximately $, or $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share and an immediate dilution of $ per share to new investors. Dilution per share to new investors is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by a new investor. The following table illustrates this calculation on a per share basis (without giving effect to the over-allotment option granted to the underwriters):

Assumed initial public offering price per share(1)		$
Net tangible book value per share as of , 2010	$	
Pro forma increase in net tangible book value per share attributable to conversion of preferred stock outstanding at , 2010		
Pro forma net tangible book value per share of common stock as of , 2010	$	
Increase per share attributable to the offering		
Pro forma as adjusted net tangible book value per share of common stock after this offering		
Pro forma dilution per share to new investors		$

(1) The mid-point of the price range set forth on the cover of this prospectus.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the price range set forth on the cover of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after giving effect to this offering by $ per share and would increase (decrease) the dilution in pro forma net tangible book value per share to investors in this offering by $ per share. This calculation assumes that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and is after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their over-allotment option in full, pro forma as adjusted net tangible book value will increase to $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors.

The following table summarizes, on a pro forma as adjusted basis as of September 30, 2010, after giving effect to this offering and the pro forma adjustments referred to above, the total number of shares of our common stock purchased from us and the total consideration and average price per share paid by existing stockholders and by new investors:

	Total Shares		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
	(in thousands of dollars, except share and per share data)				
Existing stockholders		%	$	%	$
New Investors					
Total		%	$	%	

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

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

The tables and calculations above are based on 6,371,061 shares of our common stock outstanding as of September 30, 2010 after giving effect to the conversion of 49,000,000 shares of our preferred stock outstanding as of September 30, 2010 into 49,000,000 shares of our common stock at the closing of this offering and exclude:

- shares of common stock issuable upon the exercise of options outstanding as of September 30, 2010 with exercise prices ranging from $0.10 to $1.76 per share and a weighted average exercise price of $0.48 per share (of which options to acquire 940,324 shares of common stock were vested as of September 30, 2010); and
- shares of our common stock available for future grants under our 2005 Stock Plan as of September 30, 2010.

If all of our outstanding options as of September 30, 2010 were exercised, the pro forma as adjusted net tangible book value per share after this offering would be $ per share, representing an increase to existing holders of $ per share, and there will be an immediate dilution of $ per share to new investors. In addition, we will need to obtain additional capital, and we may choose to raise such additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities would result in further dilution to our stockholders.

SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth selected consolidated financial data that is qualified in its entirety by and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes thereto appearing elsewhere in this prospectus. The consolidated financial data as of December 31, 2009 and for the fiscal years ended December 31, 2007, 2008 and 2009 are derived from our audited consolidated financial statements appearing elsewhere in this prospectus. The consolidated financial data for the fiscal year ended December 31, 2006 are derived from our audited consolidated financial statements not included in this prospectus. The consolidated financial data for the nine month periods ended September 30, 2009 and 2010, is derived from our unaudited consolidated financial statements which are presented elsewhere in this prospectus, but has been prepared on the same basis as the audited consolidated financial statements and the notes thereto, which include, in the opinion of management, all adjustments (consisting of normal recurring adjustments) necessary for a fair presentation of the information for the unaudited interim periods. The operating results for the nine month period ended September 30, 2010 may not be indicative of the operating results for the full year.

	Year Ended December 31,				Nine Months Ended September 30,	
	2006	2007	2008	2009	2009	2010
					(unaudited)	
	(in thousands of dollars, except share and per share data)					
Consolidated Statement of Operations Data:						
Revenue:						
Development and milestone revenue	$ 5,616	$ 1,405	$ 2,697	$ 1,550	$ 1,181	$ 97
Royalty revenue	652	2,828	6,192	44,963	41,884	8,635
Total revenues	6,268	4,233	8,889	46,513	43,065	8,732
Operating Expenses:						
Research and development	8,958	19,269	30,463	29,260	21,804	26,080
General and administrative	3,945	4,011	4,287	4,649	3,503	3,388
Total operating expenses	12,903	23,280	34,750	33,909	25,307	29,468
Income (loss) from operations	(6,635)	(19,047)	(25,861)	12,604	17,758	(20,736)
Other income (expense):						
Interest income	1,712	1,773	1,057	514	101	623
Interest expense	—	—	(8,678)	(12,658)	(9,210)	(9,831)
Other	40	—	—	—	—	54
Total other income (expense)	1,752	1,773	(7,621)	(12,144)	(9,109)	(9,154)
Net income (loss)	$ (4,883)	$ (17,274)	$ (33,482)	$ 460	$ 8,649	$ (29,890)
Cumulative dividends on Series A convertible preferred stock	(3,316)	(3,430)	(3,430)	(3,430)	(2,573)	(2,573)
Net income (loss) attributable to common stockholders	$ (8,253)	$ (20,704)	$ (36,912)	$ (2,970)	$ 6,076	$ (32,463)
Basic net income (loss) per share	$ (2.39)	$ (4.21)	$ (6.61)	$ (0.53)	$ 1.08	$ (5.12)
Diluted net income (loss) per share	$ (2.39)	$ (4.21)	$ (6.61)	$ 0.01	$ 0.15	$ (5.12)
Weighted average number of common shares:						
Basic	3,455,762	4,921,376	5,587,467	5,653,506	5,610,047	6,345,420
Diluted	3,455,762	4,921,376	5,587,467	56,324,761	56,282,411	6,345,420
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(1)				$ 460		$ (29,890)
Weighted-average number of shares used in calculating pro forma net income (loss) per share — basic and diluted (unaudited):(1)				56,324,761		55,345,420
Pro forma net income (loss) per share — basic and diluted (unaudited)(1)				$ 0.01		$ (0.54)

(1) Pro forma net loss per share basic and diluted have been calculated assuming the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of this offering, as if they had converted at the beginning of the period. Pro forma net loss per share basic and diluted do not give effect to the sale of shares of common stock that we are offering pursuant to this prospectus or any related estimated net proceeds therefrom. See Note 2 to our audited financial statements for an explanation of the method used to calculate the pro forma basic and diluted net income (loss) per common share and the number of the per share amounts.

	Year Ended December 31,				As of September 30, 2010
	2006	2007	2008	2009	(unaudited)
	(in thousands of dollars)				
Consolidated Balance Sheet Data:					
Unrestricted cash and cash equivalents and marketable securities	$ 40,655	$ 25,592	$ 60,380	$ 66,524	$ 45,822
Restricted cash and cash equivalents and marketable securities	256	281	6,281	2,076	1,680
Working capital	39,746	22,674	61,183	62,847	33,835
Total assets	46,426	31,907	77,134	79,899	57,502
Long-term debt	—	—	75,000	75,000	75,000
Series A convertible preferred stock	49	49	49	49	49
Accumulated deficit	(5,027)	(22,301)	(55,782)	(55,321)	(85,210)
Total stockholders' equity (deficit)	43,830	26,635	(6,747)	(6,155)	(35,917)

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

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and related notes appearing at the end of this prospectus. In addition to historical information, some of the information in this discussion and analysis contains forward-looking statements reflecting our current expectations and involves risk and uncertainties. For example, statements regarding our expectations as to our plans and strategy for our business, future financial performance, expense levels and liquidity sources are forward-looking statements. Our actual results and the timing of events could differ materially from those discussed in our forward-looking statements as a result of many factors, including those set forth under the "Risk Factors" section and elsewhere in this prospectus.

Overview

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories, Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we expect to file a new drug application, or NDA, in the first quarter of 2011, and Epliga (extended release oxcarbazepine), which is in Phase III clinical trials. Our ADHD product candidates include SPN-810 (molindone hydrochloride), a novel treatment for impulsive aggression in patients with ADHD, and SPN-812, a novel non-stimulant treatment for ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists. We believe our broad and diversified portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

We use our proprietary technologies to enhance the therapeutic benefits of approved anti-epileptic drugs, or AEDs through advanced extended release formulations. Our most advanced product candidates, SPN-538 and Epliga, are novel oral once-daily extended release formulations of topiramate and oxcarbazepine, respectively, for the treatment of epilepsy. Immediate release formulations of topiramate and oxcarbazepine, are available in generic form and are marketed under the brand names of Topamax and Trileptal, respectively. According to IMS Health, peak sales of Topamax and Trileptal represented an estimated 25.8% and 8.1% of the total seizure disorder market in 2008 and 2006, respectively. We are pursuing a Section 505(b)(2) regulatory strategy for SPN-538 and Epliga, which would allow us to rely on the existing data from the NDAs of Topamax and Trileptal, respectively. The once-per-day dosing of each of SPN-538 and Epliga is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release AEDs that are taken multiple times per day to maintain therapeutic drug concentrations over the dosing interval. We believe there is a significant unmet need for extended release products, such as SPN-538 and Epliga, for the treatment of epilepsy. Extended release products have been shown to improve compliance, increase seizure control, reduce side effects and improve tolerability as compared to immediate release products.

We are also developing treatments for new indications in diseases such as ADHD and its coexisting disorders. We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the U.S. Food and Drug Administration, or FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the

United States as an anti-psychotic to treat schizophrenia under the trade name Moban. In addition, SPN-812, which is currently in Phase II, is being developed as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. In addition, because the active ingredient of SPN-812 has demonstrated efficacy as an antidepressant in Europe, this product candidate may provide increased benefit to an estimated 40% of ADHD patients who suffer from depression. In addition to these four lead product candidates, we have a number of other product candidates in various stages of development such as SPN-809, which would represent a novel mechanism of action for the U.S. antidepressant market.

Historically, our revenues have been generated through research and development agreements, which included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, as well as royalties on product sales of licensed products, Oracea, Sanctura XR, and Intuniv. Since our inception in 2005, we have generated $0 in revenue from product sales and have incurred significant operating losses. As of September 30, 2010, we had an accumulated deficit of $85.2 million. We expect to continue to incur net losses and negative cash flow from operating activities for the foreseeable future as we continue to develop our product candidates and seek marketing approval and, subject to obtaining such approval, the eventual commercialization of SPN-538 and Epliga, as well as our other product candidates.

History of our Company

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and to enable the treatment of new indications. We have a broad portfolio of drug development technologies consisting of six platforms that include the following: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). Our proprietary technologies have been used in the following approved products: Carbatrol (carbamazepine), Adderall XR (mixed amphetamine salts), and Intuniv (guanfacine), marketed by Shire; Equetro (carbamazepine), marketed by Validus Pharmaceuticals Inc.; Sanctura XR (trospium chloride), marketed by Allergan; and Oracea (doxycycline), marketed by Galderma. Throughout our 20 year history, we have continued our commitment to innovation with a focus for the past five years on developing our own product candidates in neurology and psychiatry.

We have historically raised capital through the monetization of certain future royalty streams under our existing licenses for Oracea, Sanctura XR and Intuniv. We raised approximately $63.3 million in net proceeds in April 2008 through the monetization of future royalty payment rights and other license rights for both Oracea and Sanctura XR. In that deal, we transferred the license rights to both Oracea and Sanctura XR to TCD Royalty Sub LLC, our wholly-owned subsidiary ("Royalty Sub"), which issued $75.0 million in non-recourse notes in a private placement. All milestone and royalty revenues due from net sales of Oracea and Sanctura XR are required to be used to satisfy the payment of principal and interest on the non-recourse notes. The non-recourse notes are non-recourse to us and are secured by our Royalty Sub's assets, which include the royalty payment rights and other rights related to net sales of Oracea and Sanctura XR. In addition, we entered into an agreement with an affiliate of Shire plc in May 2009, whereby the Shire affiliate paid us a one-time, lump-sum payment of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv.

We also have a license agreement with United Therapeutics Corporation, or United Therapeutics, to use one of our proprietary technologies for an oral formulation of treprostinil for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. This oral formulation is currently being evaluated by United Therapeutics in Phase III trials for PAH. Remaining milestone payments to us could total up to approximately $6.8 million, which includes milestone payments of up to approximately $2.8 million for the satisfaction of development milestones relating to the product candidate for the treatment of PAH. If United Therapeutics receives approval to market and sell this

product candidate, we are entitled to receive single digit royalties based on worldwide net sales. We are also entitled to receive milestones and royalties for use of this formulation in other indications.

See "Liquidity and Capital Resources—Financing History and Future Capital Requirements" for additional details regarding the foregoing transactions.

Financial Overview

Revenue

Our historical revenues have been generated through research and development agreements. These agreements included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, which comprise our development and milestone revenues, as well as royalties on product sales of licensed products, Oracea, Sanctura XR, and Intuniv, which comprise our royalty revenues. Until such time that we begin generating revenues from the sales of our own approved product candidates, we expect that development and milestone revenues and royalty revenues will continue to represent our primary sources of revenues.

We recognize development and milestone revenues related to research and development agreements pursuant to which various third parties have accessed our proprietary technologies. These arrangements generally provided for fees for research and development services rendered, including milestone payments at the conclusion of the research period upon achieving specified events. Over time, we do not expect these historical revenues relating to development and milestone revenues to be significant as we continue to focus on the development and potential commercialization of our own product candidates.

We recognize royalty revenues from our collaboration agreements. Royalty revenues consist of payments received from our various collaborative partners related to the sales of products that utilize our proprietary technologies under these collaboration agreements.

The table below summarizes the revenues that we received from our collaboration arrangements.

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars)				
Development and milestone revenues					
Oracea & Sanctura XR	$ 400	$ 1,500	$ 500	$ 500	$ —
Other collaboration arrangements	1,005	1,197	1,050	681	97
Total development and milestone revenues	1,405	2,697	1,550	1,181	97
Royalty revenues:					
Oracea & Sanctura XR	2,828	6,192	8,088	5,009	8,635
Intuniv	—	—	36,875	36,875	—
Total royalty revenues	2,828	6,192	44,963	41,884	8,635
Total revenues	$ 4,233	$ 8,889	$ 46,513	$ 43,065	$ 8,732

From and after April 15, 2008, all development and milestone revenues and royalty revenues due from net sales of Oracea and Sanctura XR are required to be used to satisfy the payment of principal and interest on the non-recourse notes of Royalty Sub. We also received in May 2009 a one-time payment of approximately $36.9 million from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv and, as a result, we will not receive any future royalty payments with respect to the net sales of Intuniv.

If we obtain regulatory approval for SPN-538, Epliga or any of our other product candidates, we would expect to begin to generate revenues from product sales and, over time, we expect that our future revenues would begin to be principally derived from product sales as compared to development and milestone revenues and royalty revenues.

Prior to commercializing any of our product candidates, we expect that any revenues we generate will fluctuate from quarter to quarter as a result of the timing and amount of development and milestone revenues and royalty revenues received under our collaboration license agreements, as our revenues from these arrangements are principally based on the achievement of clinical and commercial milestones outside of our control. If we fail to complete the development of our product candidates in a timely manner or obtain regulatory approval for them, our ability to generate future revenues, and our results of operations and financial position, would be materially adversely affected.

Research and Development Expense

Research and development expenses consist of costs incurred in connection with the development of our and our collaborators' product candidates. These expenses consist primarily of:

- employee-related expenses, which include salaries and benefits;
- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical studies;
- the cost of acquiring and manufacturing clinical trial materials;
- costs related to facilities, depreciation and other allocated expenses;
- license fees for and milestone payments related to in-licensed products and technology;
- stock-based compensation expense to employees and consultants; and
- costs associated with non-clinical activities and regulatory approvals.

We expense research and development costs as incurred. Non-refundable advance payments for goods and services that will be used in future research and development activities are initially recorded as prepaid expenses and expensed as the activity is performed or when the goods have been received.

Since our founding, we have developed and evaluated a series of CNS product candidates through Phase I pharmacokinetic trials. In 2008, we conducted a review of our portfolio of product candidates and rationalized the programs based on clinical profiles, expected required resources to complete development, intellectual property, existing treatment options and commercial opportunity. As a result of that review, we elected to concentrate on our two epilepsy product candidates and the product candidates that comprise our psychiatry portfolio. We intend to continue to strategically invest in our pipeline, and the commitment of funding for each subsequent stage of our development programs is dependent upon, among other things, the receipt of clear, positive data.

The majority of our external costs relate to later-stage product candidates, as costs associated with later-stage clinical trials are, in most cases, more significant than those incurred in earlier stages of our pipeline. For example, the external costs related to our Epliga program have been higher than our other programs in recent years because Epliga is undergoing a Phase III clinical trial that began in late 2008.

We track external development expenses and direct personnel expense on a program-by-program basis. Costs related to facilities, depreciation, employee benefits and bonuses, stock-based compensation, research and development management and research and development support services and supplies are not charged to specific programs, because the number of clinical and preclinical product candidates or development projects tends to vary from period to period and internal resources are utilized across and benefit multiple programs over any given period of time. The following table is

a summary of our research and development expenses for the years ended December 31, 2007, 2008 and 2009, and the nine months ended September 30, 2009 and 2010.

	Year Ended December 31,			Nine Months Ended September 30,		From Inception to September 30,
	2007	2008	2009	2009	2010	2010
				(unaudited)		
			(in thousands of dollars)			
SPN-538	$ 1,044	$ 4,098	$ 6,464	$ 5,013	$ 5,923	$ 18,232
Epliga	3,845	10,834	10,027	7,352	10,190	35,360
SPN-810	2,192	2,199	3,333	2,265	1,705	9,429
SPN-812 and SPN-809	2,392	2,923	680	370	1,684	7,721
Other research and development programs	2,796	1,822	426	312	538	7,564
Development expenses—general	7,000	8,587	8,331	6,492	6,041	35,821
Total research and development expenses	$ 19,269	$ 30,463	$ 29,261	$ 21,804	$ 26,081	$ 114,127

The successful development of our product candidates is highly uncertain and subject to a number of risks including, but not limited to:

- The duration of clinical trials varies substantially according to the type, complexity and novelty of the product candidate;
- The FDA and comparable agencies in foreign countries impose substantial requirements on the introduction of therapeutic pharmaceutical products, typically requiring lengthy and detailed laboratory and clinical testing procedures, sampling activities and other costly and time-consuming procedures;
- Data obtained from nonclinical and clinical activities at any step in the testing process may be adverse and lead to discontinuation or redirection of development activity. Data obtained from these activities also are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval;
- The duration and cost of nonclinical studies and clinical trials may vary significantly over the life of a product candidate and are difficult to predict;
- The costs, timing and outcome of regulatory review of a product candidate are uncertain; and
- The emergence of competing technologies and products and other adverse market developments could impede our commercial efforts.

Development timelines, probability of success and development costs vary widely. As a result of the uncertainties discussed above, we anticipate that we will make determinations as to which additional programs to pursue and how much funding to direct to each program on an ongoing basis in response to the scientific and clinical data of each product candidate, as well as ongoing assessments of such product candidate's commercial potential. Accordingly, we cannot currently estimate with any degree of certainty the amount of time or money that we will be required to expend in the future on SPN-538, Epliga or other product candidates to complete current or future clinical stages prior to their regulatory approval, if such approval is ever granted. As a result of these uncertainties surrounding the timing and outcome of any approvals, we are currently unable to estimate precisely when, if ever, SPN-538, Epliga or any of our other product candidates will generate revenues and cash flows.

We expect our research and development costs to continue to be substantial for the foreseeable future and to increase with respect to our product candidates as we advance those product candidates through preclinical studies, clinical trials, manufacturing scale-up and other pre-approval activities. We

may elect to expand existing collaborative relationships or to seek new partnerships in order to provide us with a diversified revenue stream and to help facilitate the development and commercialization of our product candidate pipeline.

General and Administrative Expenses

General and administrative expenses consist principally of salaries and related costs for personnel in executive, finance, business development, marketing, information technology, legal and human resources functions. Other general and administrative expenses include facility costs not otherwise included in research and development expenses, patent filing, prosecution and defense costs, professional fees for legal, consulting, auditing and tax services, and stock compensation expense.

We expect that our general and administrative expenses in 2011 will be higher than in 2010 as a result of greater expenses relating to our operations as a public company, including increased payroll and increased consulting, legal and compliance, accounting, insurance and investor relations costs. Additionally, we plan to increase spending related to the build-out of our commercial infrastructure for the anticipated launch of both SPN-538 and Epliga in the United States in 2012. Upon approval of SPN-538, we would hire a small specialty sales force, initially consisting of a limited number of field sales representatives to support the launch of the product. We would then seek to expand our sales force in connection with an approval and commercial launch of Epliga. Having two epilepsy products that can be promoted to the same physician audience would allow us to leverage our commercial infrastructure with these prescribers.

Other Income and Expense

Other income and expense is comprised of interest income, gain on sales of equipment and interest expense. Interest income consists of interest earned on our cash and cash equivalents and marketable securities. The primary objective of our investment policy is capital preservation.

Interest expense consists primarily of interest on the $75.0 million non-recourse notes of Royalty Sub and the amortization of the related deferred financing costs. The non-recourse notes have a final stated maturity date of April 15, 2024. Until any portion of the principal on the non-recourse notes is paid down, the annual interest expense is $12.0 million, or $3.0 million per quarter.

Net Operating Losses and Tax Carryforwards

As of December 31, 2009, we had approximately $54.1 million of federal net operating loss carryforwards. We also had federal and state research and development tax credit carryforwards of approximately $3.1 million available to offset future taxable income. These federal and state net operating loss and federal and state tax credit carryforwards will begin to expire at various dates beginning in 2025, if not utilized. The Tax Reform Act of 1986 provides for a limitation on the annual use of net operating loss and research and development tax credit carryforwards following certain ownership changes that could limit our ability to utilize these carryforwards. We have not completed a study to assess whether an ownership change has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such study. Accordingly, our ability to utilize the aforementioned carryforwards may be limited. Additionally, U.S. tax laws limit the time during which these carryforwards may be utilized against future taxes. As a result, we may not be able to take full advantage of these carryforwards for federal and state tax purposes.

Net Income and Loss

We have incurred significant net losses since our inception in 2005, with the exception of 2009 when we generated net income of $0.5 million principally because of the one-time payment of $36.9 million that we received from Shire plc as consideration for a royalty-free, fully-paid-up license to

Shire plc for Intuniv. We expect to continue to incur net losses for the foreseeable future as we continue to develop our product portfolio, seek regulatory approval, and, if such approval is obtained, commercialize SPN-538 and Epliga as well as our other product candidates.

Results of Operations

Comparison of Nine Months Ended September 30, 2010 and Nine Months Ended September 30, 2009

	Nine Months Ended September 30,		Increase/ (decrease)
	2009	2010 (unaudited)	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 1,181	$ 97	$ (1,084)
Royalty revenues	41,884	8,635	(33,249)
Total revenues	43,065	8,732	
Operations Expenses:			
Research and development	21,804	26,080	4,276
General and administrative	3,503	3,388	(115)
Total operating expenses	25,307	29,468	
Income (loss) from operations	17,758	(20,736)	
Interest income	101	623	522
Interest expense	(9,210)	(9,831)	621
Net income (loss)	$ 8,649	$ (29,890)	

Revenues. Our revenues were $8.7 million for the nine months ended September 30, 2010 compared to $43.1 million for the same period in 2009, representing a decrease of $34.3 million or approximately 80%. This decrease was principally attributable to the one-time, lump-sum payment of approximately $36.9 million that we received in May 2009 from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv. We also generated lower development and milestone revenues for the nine months ended September 30, 2010 period as compared to same period in 2009 due to our focus on the development of our own product candidates as opposed to developing product candidates for third parties.

Research and Development. Our research and development expenses were $26.1 million for the nine months ended September 30, 2010 compared to $21.8 million for the same period in 2009, representing an increase of $4.3 million or approximately 20%. The $4.3 million increase in research and development expense is primarily attributable to an increase in clinical trial costs of approximately $3.2 million, the largest portion of which was due to the continuing costs for our Phase III clinical trial for Epliga and higher manufacturing costs of approximately $0.8 million principally associated with pre-validation work done at our commercial manufacturers for both SPN-538 and Epliga.

General and Administrative. Our general and administrative expenses were $3.4 million for the nine months ended September 30, 2010 compared to $3.5 million for the same period in 2009, representing a decrease of $0.1 million or approximately 3%. The $0.1 million decrease in general and administrative expense is primarily the result of lower patent and outside consulting fees incurred during the nine months ended September 30, 2010.

Interest and Other Income. Interest income was $0.6 million for the nine months ended September 30, 2010 compared to $0.1 million for the same period in 2009, representing an increase of $0.5 million. The $0.5 million increase is primarily because we invested a larger portion of our cash in marketable securities during the nine months ended September 30, 2010, which yielded higher returns

than in the prior period. For the nine months ended September 30, 2010, we also had a one-time net gain of approximately $54,000 on the sale of certain laboratory equipment.

Interest Expense. Interest expense was $9.8 million for the nine months ended September 30, 2010 compared to $9.2 million for the same period in 2009, representing an increase of $0.6 million or approximately 7%. Interest expense is comprised primarily of interest payable on the non-recourse notes of Royalty Sub at $3.0 million per quarter, or approximately $9.0 million for both nine month periods reported here, together with amortization of the related deferred financing costs related to the non-recourse notes. The $0.6 million increase in interest expense in the nine months ended September 30, 2010 is largely because of amortization expense associated with marketable securities purchased at a premium.

Net Income (Loss). Net loss was $29.9 million for the nine months ended September 30, 2010 compared to net income of $8.6 million for the same period in 2009, representing a decrease of $38.6 million. The $38.6 million decrease is principally a result of the higher royalty revenues recognized in the nine months ended September 30, 2009, including in connection with our sale to Shire plc of a fully paid-up license for Intuniv and also due to the higher research and development costs incurred for the same period in 2010.

Comparison of Year Ended December 31, 2009 and Year Ended December 31, 2008

	Year Ended December 31,		Increase/ (decrease)
	2008	2009	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 2,697	$ 1,550	$ (1,147)
Royalty revenues	6,192	44,963	38,771
Total revenues	8,889	46,513	
Operations Expenses:			
Research and development	30,463	29,260	(1,203)
General and administrative	4,287	4,649	362
Total operating expenses	34,750	33,909	
Income (loss) from operations	(25,861)	12,604	
Interest income	1,057	514	(543)
Interest expense	(8,678)	(12,658)	3,980
Net income (loss)	$ (33,482)	$ 460	

Revenues. Our revenues were $46.5 million for the year ended December 31, 2009 compared to $8.9 million for the same period in 2008, representing an increase of $37.6 million. This increase was principally due to the one-time, lump-sum payment from Shire plc of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv. We also received increased royalty revenues of approximately $1.9 million from Oracea and Sanctura XR. These gains were offset by a decrease in development and milestone revenues of approximately $1.1 million as we continue to increase our focus on the development of our own product candidates, as opposed to earning revenues from developing collaborators' product candidates.

Research and Development. Our research and development expenses were $29.3 million for the year ended December 31, 2009 compared to $30.5 million for the same period in 2008, representing a decrease of $1.2 million or approximately 4%. The decrease was primarily attributable to an approximately $0.9 million decrease in salaries, benefits and laboratory supplies associated with a

reduction in the average number of research and development employees from 69 for the year ended December 31, 2008 as compared to 56 for the year ended December 31, 2009 as part of our business strategy to improve our operating efficiencies and reduce our operating costs.

General and Administrative. Our general and administrative expenses were $4.7 million for the year ended December 31, 2009 compared to $4.3 million for the same period in 2008, representing an increase of $0.4 million or approximately 8%. This increase in general and administrative expense was primarily a result of increases in consulting expenses associated with market research and partnering opportunities as well as higher patent and legal costs.

Interest Income. Interest income was $0.5 million for the year ended December 31, 2009 compared to $1.1 million for the same period in 2008, representing a decrease of $0.5 million or approximately 51%. Although average cash balances were higher for the year ended December 31, 2009, the decrease in interest income was principally a result of lower prevailing interest rates during the period.

Interest Expense. Interest expense was $12.7 million for the year ended December 31, 2009 compared to $8.7 million for the same period in 2008, representing an increase of $4.0 million or approximately 46%. The increase in interest expense was primarily due to interest payments on the non-recourse notes of Royalty Sub, together with amortization of related deferred financing costs, for the year ended December 31, 2009 compared with the eight and one-half months that the non-recourse notes were outstanding in 2008.

Net Income (Loss). Net income was $0.5 million for the year ended December 31, 2009 compared to a net loss of $33.5 million for the same period in 2008, representing a decrease of $34.0 million. The $34.0 million change between the net loss of $33.5 million for the year ended December 31, 2008 and the net income of $0.5 million for the same period in 2009 is primarily due to higher royalty revenues recognized in the year ended December 31, 2009, offset by the higher interest expense related to the non-recourse notes in 2009 because the non-recourse notes were outstanding for the full year.

Comparison of Year Ended December 31, 2008 and Year Ended December 31, 2007

	Year Ended December 31,		Increase/ (decrease)
	2007	2008	
	(in thousands of dollars)		
Revenues:			
Development and milestone revenues	$ 1,405	$ 2,697	$ 1,292
Royalty revenues	2,828	6,192	3,364
Total revenues	4,233	8,889	
Operations Expenses:			
Research and development	19,269	30,463	11,194
General and administrative	4,011	4,287	276
Total operating expenses	23,280	34,750	
Income (loss) from operations	(19,047)	(25,861)	
Interest income	1,773	1,057	(716)
Interest expense	—	(8,678)	8,678
Net income (loss)	$ (17,274)	$ (33,482)	

Revenues. Our revenues were $8.9 million for the year ended December 31, 2008 compared to $4.2 million for the same period in 2007, representing an increase of $4.7 million. The increase in revenues relates primarily to an increase in royalties received from Oracea and the receipt of royalty

revenues related to the product launch of Sanctura XR in the second half of 2008. The increase in development and milestone revenues was due to a $1.3 million milestone payment related to the FDA approval of Sanctura XR that we received.

Research and Development. Our research and development expenses were $30.5 million for the year ended December 31, 2008 compared to $19.3 million for the same period in 2007, representing an increase of $11.2 million or approximately 58%. The increase in research and development expense is primarily attributable to an increase in clinical trial expenses of approximately $9.4 million, principally due to outside costs associated with the Phase III clinical trial for Epliga that began in second half of 2008, as well as an increase in compensation costs of approximately $1.7 million, primarily related to an increase in clinical and regulatory personnel hired to run and support the Phase III program for Epliga.

General and Administrative. Our general and administrative expenses were $4.3 million for the year ended December 31, 2008 compared to $4.0 million for the same period in 2007, representing an increase of $0.3 million or approximately 7%. The increase in general and administrative expense was primarily a result of an increase in salaries and benefits costs of $0.2 million due to an increase in personnel to support our expanded clinical operations.

Interest Income. Interest income was $1.1 million for the year ended December 31, 2008 compared to $1.8 million for the same period in 2007, representing a decrease of $0.7 million or approximately 40%. The decrease in interest income for the year ended December 31, 2008 was principally the result of significantly lower prevailing interest rates during the period, notwithstanding higher average cash balances.

Interest Expense. Interest expense was $8.7 million for the year ended December 31, 2008 compared to $0 for the same period in 2007, representing an increase of $8.7 million. The increase in interest expense was due to interest on the non-recourse notes of Royalty Sub, which were issued by it in April 2008, together with amortization of the related deferred financing costs.

Net Income (Loss). Net loss was $33.5 million for the year ended December 31, 2008 compared to $17.3 million for the same period in 2007, representing an increase of $16.2 million or approximately 94%. This change was principally the result of the higher research and development expenses associated with initiating the Phase III program for Epliga, and the higher interest expense for the year ended December 31, 2008 associated with the issuance of the non-recourse notes of Royalty Sub. These expenses were slightly offset by higher royalty revenues from product sales of Oracea and Sanctura XR.

Liquidity and Capital Resources

In December 2005, we acquired substantially all of the assets of Shire Laboratories, Inc. from Shire plc in exchange for a cash payment of approximately $0.8 million and the issuance of 4 million shares of our Series A convertible preferred stock at a value of $1.00 per share. In connection with the commencement of our operations, in December 2005 and February 2006, we raised approximately $45.0 million through the sale of 45 million shares of Series A convertible preferred stock. To date, we have not generated any revenues from the product sales. Since our inception in 2005, we have funded our operations largely through venture capital equity and other financings, such as the monetization of future royalties due to us from existing license agreements with Endo Pharmaceuticals Solutions Inc., Galderma Laboratories, L.P. and Shire plc pursuant to which we have received net proceeds of approximately $100.2 million through September 30, 2010. As of September 30, 2010, we had unrestricted cash, cash equivalents and marketable securities of approximately $45.8 million.

Financing History and Future Capital Requirements

Non-recourse Notes. In April 2008, we raised approximately $63.3 million in net proceeds through a private placement of $75.0 million aggregate principal amount of 16% non-convertible, non-recourse, secured promissory notes due April 15, 2024 (the "Non-recourse Notes") by Royalty Sub. As part of the transaction, we transferred to Royalty Sub our payment rights and other license rights related to two products that utilize our proprietary technologies: Oracea, which is marketed by Galderma as a treatment for rosacea; and Sanctura XR, which is marketed by Allergan as a treatment for overactive bladder. The Non-recourse Notes are secured by these payment and other license rights, as well as by the pledge of all our outstanding equity interest in Royalty Sub. While the Non-recourse Notes are outstanding, all royalty and milestone payments due from net sales of Oracea and Sanctura XR go to the payment of interest, and when available, to the principal on such Non-recourse Notes. Accordingly, unless and until the Non-recourse Notes are fully paid, future royalties and milestone payments due from net sales of Oracea and Sanctura XR will not be available to fund our operations. Annual interest expense related to the Non-recourse Notes is $12.0 million.

Royalty Sub began making quarterly debt service payments on the Non-recourse Notes beginning on July 15, 2008. Applicable royalties received by Royalty Sub on net sales of Oracea and Sanctura XR for any quarter that exceed the interest payments and expenses due for that quarter are applied to the repayment of principal on the Non-recourse Notes. Any portion of the principal amount of the Non-recourse Notes not repaid on or before the legal final maturity date of April 15, 2024, will be payable on that date. As of September 30, 2010, no principal payments have been made. Upon payment of the Non-recourse Notes in full, any residual rights to the royalty payments will revert to us. In addition, the Non-recourse Notes may be redeemed at our option on any quarterly payment date, subject to the payment of a redemption premium if repaid on or before April 15, 2012. After April 15, 2012, the Non-recourse Notes may be redeemed without premium.

In connection with the Non-recourse Note transaction, an $8.0 million interest reserve was established to fund potential interest shortfalls or, if none, for repayment of principal due under the Non-recourse Notes. These funds came out of the debt proceeds and are restricted. Deferred financing costs of approximately $4.4 million were paid by Royalty Sub to complete the transaction. These costs were funded from the debt proceeds and will be amortized to interest expense over 16.2 years, which is the expected term of Non-recourse Notes.

In the first quarter of 2010, the $8.0 million interest reserve was exhausted. As of September 30, 2010, the Royalty Sub had approximately $1.4 million available for the quarterly interest payment of $3.0 million due on October 15, 2010. As of December 1, 2010, the Royalty Sub paid the interest shortfall of $1.6 million and had $0.8 million available for future interest payments. Under the terms of the Non-recourse Notes, the Royalty Sub is not in default for payment of interest unless it fails to make payment in full on the interest payment by the next succeeding payment date. To date, the Royalty Sub has been able to make payment in full of all interest payments before the next succeeding payment date. In the event of a default for failure to pay interest timely, the noteholders do not have recourse to us as the Non-recourse Notes are non-recourse beyond Royalty Sub and non-convertible into any other of our securities, and have not been guaranteed by us. However, we have pledged all of our equity interests in Royalty Sub to secure the Non-recourse Notes and, upon an event of default, the noteholders could elect to exercise their rights to acquire those equity interests in the Royalty Sub.

Sale of Intuniv Royalties. In May 2009, we entered into an agreement with an affiliate of Shire plc, whereby a Shire affiliate paid us a one-time, lump-sum payment of approximately $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv, which is a novel ADHD product marketed by Shire plc and utilizes one of our proprietary technologies. As a result, we will not receive any future royalty payments from Shire plc with respect to Intuniv.

United Therapeutics License

We have a license agreement with United Therapeutics to use one of our proprietary technologies for an oral formulation of Remodulin for the treatment of PAH, and potentially for additional indications. This oral formulation of treprostinil diethanolamine, or treprostinil, is currently being evaluated by United Therapeutics in Phase III trials for PAH. Through September 30, 2010, we have received approximately $750,000 in pre-commercial milestone payments under the agreement. Remaining milestone payments to us could total up to approximately $2.8 million based on satisfaction of development milestones of oral treprostinil and up to approximately $4.0 million for the development of each additional product that combines a form of oral treprostinal that utilizes our technologies with another drug compound. If United Therapeutics receives approval to market and sell oral treprostinil for additional indications and/or any additional combination products that utilizes our technologies, we will receive royalties based on net sales worldwide in the single digits. Any revenues received under this license will fluctuate as a result of the timing and amount of milestone and other payments received under this license, and the amount and timing of payments that we receive upon the sale of covered products, to the extent any are successfully commercialized by United Therapeutics or its sublicensees.

Funding Requirements

As of September 30, 2010, we had unrestricted cash, cash equivalents and marketable securities of $45.8 million, and $1.4 million in restricted cash and cash equivalents reserved for interest payments by the Royalty Sub. Although it is difficult to predict future liquidity requirements, we believe that the net proceeds from this offering, together with our existing unrestricted cash, cash equivalents and marketable securities and anticipated future product revenues, will be sufficient to fund our operations for at least the next months. However, successful transition to profitability is dependent upon achieving a level of revenues adequate to support our cost structure, which we do not expect in the near term, if at all. We cannot assure you that we will ever be profitable or generate positive cash flow from operating activities.

We expect to continue to incur substantial additional operating losses for at least the foreseeable future as we continue to develop our product candidates and seek marketing approval and, subject to obtaining such approval, the eventual commercialization of SPN-538, Epliga and our other product candidates. If we obtain marketing approval for SPN-538 or Epliga, we will incur significant sales, marketing and outsourced manufacturing expenses. In addition, we expect to incur additional expenses to add operational, financial and information systems and personnel, including personnel to support our planned product commercialization efforts. We also expect to incur significant costs to comply with corporate governance, internal controls and similar requirements applicable to us as a public company following the closing of this offering.

Our future use of operating cash and capital requirements will depend on many forward-looking factors, including the following:

- The timing of our submission to the FDA, and outcome of the FDA's review, of the NDA for SPN-538;
- The timing and outcome of Phase III data for Epliga, along with the timing of our submission to the FDA, and the outcome of the FDA's review, of the NDA for Epliga;
- The extent to which the FDA may require us to perform additional clinical trials for SPN-538 or Epliga;
- The timing and success of this offering;

- The costs of our commercialization activities for SPN-538 and/or Epliga, if either is approved by the FDA;
- The cost of purchasing manufacturing and other capital equipment for our potential products;
- The scope, progress, results and costs of development for our other product candidates;
- The cost, timing and outcome of regulatory review of our other product candidates;
- The extent to which we acquire or invest in products, businesses and technologies;
- The extent to which we choose to establish collaboration, co-promotion, distribution or other similar agreements for product candidates; and
- The costs of preparing, submitting and prosecuting patent applications and maintaining, enforcing and defending intellectual property claims.

We may need to obtain additional capital through equity offerings, debt financing and/or payments under new or existing licensing and research and development collaboration agreements. We expect that our progress in the development of our product candidates may provide sufficient value inflection milestones, based on which we will be able to seek additional funding. The type, timing, and terms of financing, if required, will depend upon our cash needs, the availability of financing sources and the prevailing conditions in the financial markets. There can be no assurance that such financing will be available to us at any given time or available on favorable terms, if at all. If sufficient funds on acceptable terms are not available when needed, we could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of our development programs, which may have a material adverse effect on our business, results of operations and financial condition. In addition, additional debt financing, if available, would result in increased fixed payment obligations and may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Any debt financing or additional equity that we raise may contain terms, such as liquidation and other preferences, that are not favorable to us or our stockholders. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish valuable rights to our technologies, future revenue streams or product candidates or to grant licenses on terms that may not be favorable to us.

Cash Flows

The following table sets forth the major sources and uses of cash for the periods set forth below:

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars)				
Net cash provided by (used in):					
Operating activities	$ (13,980)	$ (29,652)	$ 2,634	$ 11,994	$ (20,840)
Investing activities	14,854	15,481	(28,385)	(19,618)	14,278
Financing activities	5	64,462	4,280	2,546	412
Net increase (decrease) in cash and cash equivalents	$ 879	$ 50,291	$ (21,471)	$ (5,078)	$ (6,150)

Operating Activities

The decrease in cash of $32.8 million in net cash provided by operations for the nine months ended September 30, 2010 compared to the same period in 2009 was primarily because of the royalty revenues received in May 2009 as a one-time, lump-sum payment of approximately $36.9 million from Shire plc as consideration for a royalty-free, fully paid-up license to Shire plc for Intuniv. This decrease in cash provided by operations was offset in the 2010 period by an increase of $5.6 million in the net changes in working capital relating to operations.

Net cash provided by operations activities for the year ended December 31, 2009 compared to net cash used in operations for the same period in 2008 increased by $32.3 million. This increase was primarily the result of a $33.8 million increase in the difference between the net income for the year ended December 31, 2009 compared to the net loss for the same period in 2008 because of the receipt of the one-time payment of approximately $36.9 million from Shire plc for Intuniv. This was offset by a $1.7 million decrease in the net changes in working capital relating to operations.

Net cash used in operations for the year ended December 31, 2008 compared to the same period in 2007 increased by $15.7 million. This increase was primarily the result of a $16.2 million increase in the net loss, offset by, among other things, a $0.4 million increase in non-cash items, such as depreciation, stock-based compensation expense and amortization of deferred financing expenses associated with the Non-recourse Notes issued in 2008.

We expect cash used in operating activities to increase for the year ending December 31, 2010 as compared to same period in 2009 due to the anticipated increase in our operating losses associated with the clinical trials, particularly the Phase III trials for Epliga, costs associated with the preparing the NDA for SPN-538, which we expect to file in the first quarter of 2011, and the expected acceleration of our development programs.

Investing Activities

The increase of $33.9 million in net cash provided by investing activities for the nine months ended September 30, 2010 compared to the same period in 2009 was primarily the result of a $71.9 million increase in cash used for the purchase of marketable securities, offset by a $38.2 million decrease in the cash received from the sales and maturities of marketable securities and a $0.2 million decrease in cash used for the purchase of property and equipment.

Net cash used in investing activities for the year ended December 31, 2009 compared to net cash provided by investing activities for the same period in 2008 decreased by $43.9 million. This decrease was primarily a result of a $76.5 million decrease in cash received from the sales and maturities of marketable securities, offset by a $33.2 million increase in the cash used for the purchase of marketable securities and $0.6 million increase in purchases of property and equipment primarily related to the leasehold improvements for our facility and the purchase of laboratory equipment.

Net cash used in investing activities increased by $0.6 million for the year ended December 31, 2008 compared to the same period in 2007. This increase in cash used for investing activities was primarily a result of a $40.8 million increase in the cash received from the sales and maturities of marketable securities and a $0.9 million decrease in purchases of property and equipment, offset by $41.1 million decrease in purchases of marketable securities.

Financing Activities

Net cash provided by financing activities decreased by $2.1 million for the nine months ended September 30, 2010 compared to the same period in 2009. This decrease was primarily due to the drawdown in full by January 2010 of the remaining balance in the interest reserve account established to fund shortfalls in interest payments for the Non-recourse Notes.

Net cash provided by financing activities decreased by $60.2 million for the year ended December 31, 2009 compared to the same period in 2008 and increased by $64.5 million for the year ended December 31, 2008 compared to the same period in 2007. The increase for the year ended December 31, 2008 and the decrease for the year ended December 31, 2009 were primarily due to the issuance of the $75 million in Non-recourse Notes in April 2008, offset by the initial funding of, and then subsequent interest payments from, the interest reserve account for the Non-recourse Notes and the deferred financing costs associated with the Non-recourse Notes.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations and commitments as of September 30, 2010 (except as noted below):

Contractual Obligations	Less than 1 Year	1 – 3 Years	3 – 5 Years	Greater than 5 Years	Total
	(in thousands of dollars)				
Non-recourse Notes[1]	$ —	$ —	$ —	$ 75,000	$ 75,000
Interest on Non-recourse Notes[1]	12,000	24,000	24,000	102,500	162,500
Operating leases[2]	983	1,610	—	—	2,593
Purchase obligations[3]	9,988	190	—	—	10,178
Total[4]	$ 22,971	$ 25,800	$ 24,000	$ 177,500	$ 250,271

(1) Annual interest expense is $12.0 million, based on a principal amount outstanding of $75.0 million as of September 30, 2010. For purposes of this table, we have assumed that the repayment of principal will not be repaid before the legal final maturity date of April 15, 2024. The Non-recourse Notes and related interest payments are non-recourse beyond Royalty Sub and non-convertible into any other of our securities.

(2) Our commitments for operating leases relate to our lease of office and laboratory space as of September 30, 2010.

(3) Relates primarily to agreements and purchase orders with contractors for the conduct of clinical trials and other research and development and marketing activities.

(4) This table does not include (a) any milestone payments which may become payable to third parties under license agreements as the timing and likelihood of such payments are not known, (b) any royalty payments to third parties as the amounts, timing and likelihood of such payments are not known and (c) contracts that are entered into in the ordinary course of business which are not material in the aggregate in any period presented above.

In November 2010, we amended the lease for our principal office and laboratory space. Under terms of the amended lease, we extended the term for an additional five years to April 2018, obtained six months' rent abatement beginning in November 2010, with no future rent increase until November 2013 and thereafter only 2% annual rent increase per year, as well as additional funds and reimbursements for certain tenant improvements.

We have obtained exclusive licenses from third parties for proprietary rights to support the product candidates in our psychiatry portfolio. Under license agreements with Afecta, we have an exclusive option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. We do not owe any future milestone payments for SPN-810. We will also be obligated to pay royalties to Afecta based on net sales worldwide of our product candidates in the low-single digits. We have also entered into a purchase and sale agreement with Rune, where we obtained the exclusive worldwide rights to a product concept from Rune. There are no future milestone payments owing to Rune under this agreement. If we receive approval to

market and sell any products based on the Rune product concept for SPN-809, we will be obligated to pay royalties to Rune based on net sales worldwide in the low single digits.

Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate these estimates and judgments, including those described below. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. These estimates and assumptions form the basis for making judgments about the carrying values of assets and liabilities and amounts recorded as revenues and expenses that are not readily apparent from other sources. Actual results and experiences may differ materially from these estimates.

While a summary of significant accounting policies are more fully described in Note 2 to our consolidated financial statements appearing at the end of this prospectus, we believe that the following accounting policies are the most critical to aid you in fully understanding and evaluating our reported financial results and affect the more significant judgments and estimates that we use in the preparation of our consolidated financial statements.

Revenue Recognition

Our revenues have been generated through research and development agreements, which included fees for development services provided to customers, payments for achievement of specified development, regulatory and sales milestones and royalties on product sales of licensed products. For multiple element arrangements, we evaluate the components of each arrangement as separate elements based on certain criteria. Accordingly, revenues from collaboration agreements are recognized based on the performance requirements of the agreements. We recognize revenues when persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the fee is fixed and determinable; and collection is reasonably assured.

We recognize development revenues as the related costs are incurred. Milestone payments are recognized as revenues when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone.

We record royalty revenues based on estimates of the sales that occurred during the relevant period. The relevant period estimates of sales are based on interim data provided by licensees and analysis of historical royalties received (adjusted for any changes in facts and circumstances, as appropriate). We maintain regular communication with our licensees in order to obtain information to develop reasonable estimates. Differences between actual royalty revenues and estimated royalty revenues are reconciled and adjusted for in the period which they become known, typically the following quarter. Historically, adjustments have not been material based on actual amounts received from licensees. To the extent we do not have sufficient ability to accurately estimate revenues; we record revenues on a cash basis.

Accrued Expenses

As part of the process of preparing the consolidated financial statements, we may be required to estimate accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost. The majority of our service providers invoice us monthly in arrears for services performed. We make estimates of our accrued expenses as of each consolidated balance sheet date in our consolidated financial statements based on facts and circumstances known to us. We confirm the accuracy of our estimates with the service providers and make adjustments if necessary. Examples of estimated accrued expenses include:

- fees paid to contract research organizations, or CROs, in connection with clinical trials;
- fees paid to investigative sites in connection with clinical trials;
- fees paid to contract manufacturers in connection with the production of clinical trial materials; and
- professional service fees.

We base our expenses related to clinical trials on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and CROs that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the completion of clinical trial milestones. In accruing the related service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we will adjust the accrual accordingly. If we do not identify costs that we have begun to incur or if we underestimate or overestimate the level of services performed or the costs of these services, our actual expenses could differ from our estimates. We do not anticipate the future settlement of existing accruals to differ materially from our estimates.

Stock-Based Compensation

We recognize as compensation expense the estimated fair value of stock options and non-vested stock awards issued to employees over the requisite service periods, which are typically the vesting periods. Equity instruments issued to non-employees are recorded at their estimated fair value and are remeasured each reporting period as the equity instruments vest and the related expense is recognized ratably over the related service period.

Stock-based compensation expense includes stock options and non-vested stock granted to employees and non-employees and has been reported in our statements of operations as follows:

	Years Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
	(in thousands of dollars)				
Research and development	$ 9	$ 28	$ 28	$ 21	$ 32
General and administrative	65	71	83	62	92
Total	$ 74	$ 99	$ 111	$ 83	$ 124

Historically, stock-based compensation has not been material to our results of operations or financial position. Because the determination of the estimated fair value of share-based payments inherently includes the use of subjective assumptions and the potential that the related expense may be material in the future, we have included stock-based compensation as a significant accounting policy.

We calculate the fair value of stock-based compensation awards using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires the input of subjective assumptions, including stock price volatility, assumed dividend yield, the expected life of stock options and a risk-free interest rate. We calculate expected volatility based on reported data for selected reasonably similar publicly traded companies, or guideline peer group, for which the historical information is available. We will continue to use the guideline peer group volatility information until the historical volatility of our common stock is relevant to measure expected volatility for future option grants. The assumed dividend yield is based on our expectation of not paying dividends in the foreseeable future. We determine the average expected life of stock options according to the "simplified method" as described in Staff Accounting Bulletin 110, which is the mid-point between the vesting date and the end of the contractual term. We determine the risk-free interest rate by reference to implied yields available from U.S. Treasury securities with a remaining term equal to the expected life assumed at the date of grant. The assumptions used in the Black-Scholes option-pricing model for the years ended December 31, 2007, 2008 and 2009 and the nine months ended September 30, 2009 and 2010 are set forth in our consolidated financial statements appearing at the end of this prospectus.

Forfeitures are not an assumption that impacts the Black-Scholes option-pricing model, however, it is an estimate that impacts the amount of stock compensation expense recognized. We estimate forfeiture rates based on our historical analysis of actual stock option forfeitures.

There is a high degree of subjectivity involved when using option-pricing models to estimate stock-based compensation. There currently is no market-based mechanism or other practical application to verify the reliability and accuracy of the estimates stemming from these valuation models, nor is there a means to compare and adjust the estimates to actual values. Although the estimated fair value of employee stock-based awards is determined using an option-pricing model, that value may not be indicative of the fair value observed in a market transaction between a willing buyer and willing seller. If factors change and we employ different assumptions when valuing our options, the compensation expense that we record in the future may differ significantly from what we have historically reported.

Our board of directors estimated the fair value for our common stock, with input from management. Given the absence of an active market for our common stock, our board of directors contemporaneously estimated the fair value of our common stock with the assistance of a third-party valuation firm on the dates of grant. These contemporaneous valuations were performed in accordance with applicable methodologies, approaches and assumptions of the technical practice aid issued by the American Institute of Certified Public Accountants Practice Aid entitled *Valuation of Privately-Held Company Equity Securities Issued as Compensation,* considering numerous objective and subjective factors to determine common stock fair market value at each option grant date, including but not limited to the following factors:

- our stage of development and business strategy;
- our financial condition, operating results and book value;
- economic and competitive elements affecting us, our industry and our target markets;
- our projected operating results;
- a comparative analysis of our financial condition and operating results with those of publicly-owned companies engaged in similar lines of business;

- the current and historical relationship between the reported stock prices and revenues and earning levels of selected publicly traded companies engaged in similar lines of business;
- important developments relating to the results of our clinical trials;
- the likelihood of achieving a liquidity event for our outstanding shares of stock; and
- the price per share at which our Series A convertible preferred stock was issued to investors including the rights, preferences and privileges of the preferred stock relative to the common stock. In considering the rights and preferences of our Series A convertible preferred stock relative to our common stock, we considered the following rights and preferences:
  - The holders of our Series A convertible preferred stock are entitled to receive a cumulative annual dividend of $0.07 per share, when and if declared by the board of directors; and,
  - The holders of our Series A convertible preferred stock are entitled to a liquidation preference. The aggregate amount of liquidation preferences, excluding any dividends, has increased from $6.8 million as of December 31, 2007 to $16.2 million as of September 30, 2010. In the event of liquidation, dissolution or winding up of our company, the liquidation preference for each Series A convertible preferred share equals the original purchase price of $1.00 per share, plus accumulated unpaid dividends.

The following table represents stock option grant information from January 1, 2009 through the filing date, including the estimated fair value of the option grant as determined by the Black-Scholes option-pricing model.

Grant Date	Number of Options	Exercise Price	Estimated Fair Value	Intrinsic Value
January 19, 2009	225,000	$ 0.40	$ 0.23	$ —
December 15, 2009[1]	257,200	$ 1.76[1]	$ 1.03	$ —
February 10, 2010	52,500	$ 0.84	$ 0.49	$ —
April 16, 2010	32,750	$ 0.84	$ 0.49	$ —
July 20, 2010	38,500	$ 0.84	$ 0.48	$ —
October 15, 2010	15,000	$ 0.64	$ 0.37	$ —
November 2, 2010	880,000	$ 0.64	$ 0.41	$ —
November 16, 2010	35,000	$ 0.64	$ 0.41	$ —
Total	1,535,950			

(1) On November 2, 2010, 255,000 of these options were repriced from $1.76 to $0.64 per share.

Our board of directors has made only one grant of non-vested stock. This grant was made in December 2005 for 3,500,000 shares of common stock. The estimated fair value of those shares as of the date of grant was $0.10 per share.

On November 2, 2010, our board of directors repriced 255,000 of the options granted on December 15, 2009 from a per share exercise price of $1.76 to $0.64. In addition, our board approved the modification of the performance vesting requirements related to 157,697 employee stock options and 411,765 shares of non-vested stock awarded to our chief executive officer. The vesting of these share-based awards were contingent upon the filing of our first NDA on or before December 22, 2010, and our board extended the deadline for the achievement of this performance condition to March 31, 2011. As a result of these actions, there is no immediate charge related to the repriced and modified options, and we will recognize additional stock based compensation of approximately $50,000 over the remaining vesting periods for these options.

All contemporaneous valuations were prepared consistent with the AICPA Practice Aid. At each valuation date, we considered the use of market, income and asset valuation approaches. We lacked relevant financial metrics to utilize the market approach and the asset approach was not utilized because the majority of our assets are intangible, accordingly we used an income approach for each valuation. The income approach values a business based upon the future benefits that will accrue to it with the value of the future economic benefits discounted back to a present value at some appropriate discount rate. Implicit in the market price of all publicly traded securities is a consensus forecast of earnings and financial condition. The consensus forecast results from the information made available to the investing public by us and from the numerous forecasts prepared by financial analysts. We have replicated this approach through the preparation of an operating forecast and the use of discounted cash flow analysis. The discount rate reflects all the risk of ownership and the associated risks of realizing the prospective economic income stream. Given that we have Series A convertible preferred stock outstanding, it was also necessary to allocate our company's value to the various classes of stock. As provided in the AICPA Practice Guide, there are several approaches for allocating equity value of a privately-held company among the securities in a complex capital structure, including the current value method, the probability weighted expected return method and the option pricing method. The current value method was not employed because a liquidity event, in the form of an acquisition or dissolution, was not imminent. The probability weighted expected return method was not utilized because of the nature of drug development and our stage of development estimating the probability and value of various liquidity events is highly speculative. We used the option-pricing method to allocate the estimated value of our equity to the classes of securities. The value of our common stock was then discounted for lack of marketability, or the inability to readily sell shares, which increases the owner's exposure to changing market conditions and increases the risk of ownership. The discount for lack of marketability was derived using a protective put calculation using the Black-Scholes option pricing model.

Stock Option Grants on January 19, 2009

Our board of directors granted stock options on January 19, 2009, with each having an exercise price of $0.40 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of December 31, 2007 provided by management in determining the fair value of our common stock on January 19, 2009. We considered this valuation relevant in our determination of the estimated fair value of the common stock primarily because the deterioration of the overall financial markets in the second half of 2008 overshadowed progress on our clinical pipeline and the financing from the Non-recourse Notes. Our board of directors considered that in the face of the credit and liquidity crisis and the resulting uncertainties, the prospects for a liquidity event in the foreseeable future were significantly lower.

In the December 31, 2007 valuation, we used the income approach, specifically a discounted cash flow analysis, to estimate our company's equity value. The first step in that process was to calculate the present value of our discrete net cash flows for the periods projected. Next, the present value of our terminal net cash flow was calculated. The sum of these two present values, utilizing a cost of capital discount rate of 21.2%, determined the total market value capitalization on a minority basis to approximate $59.5 million. We added free cash (cash remaining after all investments and commitments that could potentially be available for debt service or shareholders dividends without impairing operations) in the amount of $25.9 million to estimate the market value of the total equity on a minority interest basis to approximate $85.4 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using the option-pricing method. A discount of 25.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at December 31, 2007 of $0.40 per share. Our board determined this valuation analysis to be reasonable and, on the basis of the factors described above, that the estimated fair value of our common stock on January 19, 2009 was $0.40 per share.

Stock Option Grants on December 15, 2009

Our board of directors granted stock options on December 15, 2009, with each having an exercise price of $1.76 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of July 16, 2009 provided by management in determining the fair value of our common stock on December 15, 2009. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. In addition, to the a non-risk adjusted forecast we also considered a risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on the products clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 25.0% and 18.9%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine the total market value of capitalization for us on a minority interest basis of approximately $122.9 million. We added free cash in the amount of $80.6 million to estimate the market value of the total equity, on a minority interest basis, of to be approximately $203.5 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using option-pricing method. A discount of 30.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at July 16, 2009 of $1.76 per share. Based on the foregoing, we concluded the fair value of our common stock as of December 15, 2009 was $1.76 per share. No significant changes had come to our attention between July 16, 2009 and the December 15, 2009 grant date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The increase in the estimated fair value of the common stock relative to the December 31, 2007 valuation relates to several items. First, we had an additional $55.0 million of free cash on hand as a result of the monetization of certain future royalty streams under our licenses for Oracea, Sanctura XR and Intuniv. In addition, we had completed in-depth market research in mid-2009 that indicated a substantially greater commercial potential for our two epilepsy product candidates.

Stock Option Grants on February 10, April 16 and July 20, 2010

Our board of directors granted stock options on February 10, April 16 and July 20, 2010, with each having an exercise price of $0.84 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of December 31, 2009 provided by management in determining the fair value of our common stock on each of February 10, April 16 and July 20, 2010. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. We considered a non-risk adjusted forecast and risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our products clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 25.0% and 15.7%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine the total market value of capitalization for us, on a minority interest basis, of approximately $53.0 million. We added free cash in the amount of $66.7 million to estimate the market value of the total equity on a minority interest basis to be approximately $119.7 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using option-pricing method. A discount of 30.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at December 31, 2007 of $0.84 per share. Based on the foregoing, we concluded the fair value of our common stock as of February 10, 2010 was $0.84 per share. We further determined the fair value of the common stock as of April 16 and July 20, 2010 to be $0.84 per share. No significant changes had come to our attention between December 31, 2009 and each of the foregoing grants date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The decrease in the estimated fair value of the common stock as compared to the July 16, 2009 valuation principally relates to information regarding the announcement in December 2009 by a competitor of the initiation of a Phase III clinical trial for a once-a-day, extended-release topiramate product to treat epilepsy that could compete head-to-head with SPN-538, and, if approved before SPN-538, would have three years of market exclusivity.

Stock Option Grants on October 15, November 2 and November 16, 2010

Our board of directors granted stock options on October 15, November 2 and November 16, 2010, with each having an exercise price of $0.64 per share. In addition to considering the objective and subjective factors listed above, our board of directors considered the valuation as of October 1, 2010 provided by management in determining the fair value of our common stock on each of October 15, November 2 and November 16, 2010. We utilized the income approach, specifically a discounted cash flow analysis, to estimate the equity value of our company. We utilized a non-risk adjusted forecast and a risk-adjusted forecast using various probabilities to reflect the risks of achieving commercialization based on our product candidates' clinical stage of development. We utilized non-risk adjusted and risk adjusted costs of capital of 22.0% and 14.2%, respectively. These discount rates were applied to our discrete net cash flows to determine the present value. This present value was combined with the present value of our terminal cash flow to determine our total market value of capitalization on a minority interest basis of approximately $64.4 million. We added free cash in the amount of $45.8 million to estimate the market value of the total equity on a minority interest basis to be approximately $110.2 million. This estimated value was allocated between the Series A convertible preferred stock and common stock using option-pricing method. A discount of 20.0% was applied to account for the lack of marketability of our common stock. This analysis yielded an estimated fair value of our common stock at October 1, 2010 of $0.64 per share. Based on the foregoing, we concluded the fair value of our common stock as of October 15, November 2 and November 16, 2010 was $0.64 per share. No significant changes had come to our attention between October 1, 2010 and each of the foregoing grants date to warrant a revaluation of the stock. We therefore concluded there was no basis for a change in the fair value during such period.

The decrease in the estimated fair value of the common stock as compared to the December 31, 2009 valuation principally relates to a reduction of $20.8 million of free cash and a further refinement in the market estimates for our two epilepsy products based on additional market research on the dynamics of the market for epilepsy products and our expected product profiles upon approval.

Recent Accounting Pronouncements

In August 2009, the FASB issued ASU No. 2009-05, *Fair Value Measurements and Disclosures (Topic 820)—Measuring Liabilities at Fair Value* ("ASU 2009-05"). ASU 2009-05 provides guidance in measuring the fair value of a liability when a quoted price in an active market does not exist for an identical liability or when a liability is subject to restrictions on its transfer. ASU 2009-15 was effective for us beginning with the quarter ended December 31, 2009. The adoption of ASU 2009-05 had no impact on the fair value measurements of our liabilities.

In October 2009, the FASB issued ASU No. 2009-13, *Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements: a consensus of the FASB Emerging Issues Task Force* ("ASU 2009-13"). ASU 2009-13 establishes a selling-price hierarchy for determining the selling price of each element within a multiple-deliverable arrangement. Specifically, the selling price assigned to each deliverable is to be based on vendor-specific objective evidence (VSOE) if available, third-party evidence, if VSOE is unavailable, and estimated selling prices if neither VSOE or third-party evidence is available. In addition, ASU 2009-13 eliminates the residual method of allocating arrangement consideration and instead requires allocation using the relative selling price method. ASU 2009-13 will be effective prospectively for multiple-deliverable revenue arrangements entered into, or materially modified, in

fiscal years beginning on or after June 15, 2010. Presently, we are assessing what impact, if any, the adoption of ASU 2009-13 may have on our consolidated financial statements.

In January 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-06, *Fair Value Measurements and Disclosures (Topic 820)—Improving Disclosures about Fair Value Measurements* ("ASU No. 2010-06"). ASU No. 2010-06 requires: (1) fair value disclosures of assets and liabilities by class; (2) disclosures about significant transfers in and out of Levels 1 and 2 on the fair value hierarchy, in addition to Level 3; (3) purchases, sales, issuances, and settlements be disclosed on gross basis on the reconciliation of beginning and ending balances of Level 3 assets and liabilities; and (4) disclosures about valuation methods and inputs used to measure the fair value of Level 2 assets and liabilities. ASU No. 2010-06 becomes effective for the first financial reporting period beginning after December 15, 2009, except for disclosures about purchases, sales, issuances, and settlements of Level 3 assets and liabilities which will be effective for fiscal years beginning after December 15, 2010. We are currently assessing what impact, if any, ASU No. 2010-06 will have on our fair value disclosures; however, we do not expect the adoption of the guidance provided in this codification update to have any material impact on our consolidated financial statements.

In February 2010, the FASB issued amended guidance on subsequent events. Under this amended guidance, SEC filers are no longer required to disclose the date through which subsequent events have been evaluated in originally issued and revised financial statements. This guidance was effective immediately and we adopted these new requirements upon issuance of this guidance.

In April 2010, the FASB issued ASU No. 2010-17, *Revenue Recognition—Milestone Method* (ASU 2010-017). ASU 2010-017 provides guidance in applying the milestone method of revenue recognition to research or development arrangements. This guidance concludes that the milestone method is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, an entity can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. The guidance is effective for fiscal years, and interim periods within those years, beginning on or after June 15, 2010. The adoption of this accounting standard is not expected to impact our financial position or results of operations.

Quantitative and Qualitative Disclosure About Market Risk

The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to maximize income from our investments without assuming significant risk. Our exposure to market risk is confined to our cash and cash equivalents. As of September 30, 2010, we had unrestricted cash, cash equivalents and marketable securities of $45.8 million. We do not engage in any hedging activities against changes in interest rates. Because of the short-term maturities of our cash and cash equivalents, we do not believe that an increase in market rates would have any significant impact on the realized value of our investments. We do not have any foreign currency or other derivative financial instruments.

We contract with contract research organizations and investigational sites globally. We may be subject to fluctuations in foreign currency rates in connection with these agreements, primarily with respect to Euro denominated currencies. We do not hedge our foreign currency exchange rate risk. A hypothetical 10% appreciation in Euro exchange rates against the U.S. dollar from prevailing market rates would have decreased our net income by approximately $139,000 for the year ended December 31, 2009. Conversely, a hypothetical 10% depreciation in Euro exchange rates against the U.S. dollar from prevailing market rates would have increased our net income by approximately $139,000 for the year ended December 31, 2009.

We do not believe that inflation and changing prices over the years ended December 31, 2008 and 2009 and the nine months ended September 30, 2010 had a significant impact on our results of operations.

BUSINESS

Overview

We are a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system, or CNS, diseases. Our extensive expertise in product development has been built over the past 20 years: initially as a stand alone development organization, then as a U.S. subsidiary of Shire plc and, upon our acquisition of substantially all the assets of Shire Laboratories Inc. in late 2005, as Supernus Pharmaceuticals. We are developing several product candidates in neurology and psychiatry to address large market opportunities in epilepsy and attention deficit hyperactivity disorder, or ADHD. Our two epilepsy product candidates are SPN-538 (extended release topiramate), for which we expect to file a new drug application, or NDA, in the first quarter of 2011, and Epliga (extended release oxcarbazepine), which is in Phase III clinical trials. Our ADHD product candidates include SPN-810 (molindone hydrochloride), a novel treatment for impulsive aggression in patients with ADHD and SPN-812, a novel non-stimulant treatment of ADHD. Both of these programs are in Phase II. In addition to these four lead product candidates, we have several additional product candidates in various stages of development. We intend to market our product candidates in the United States through our own focused sales force targeting specialty physicians, including neurologists and psychiatrists. We believe our diversified and broad portfolio of product candidates provides us with multiple opportunities to achieve our goal of becoming a leading specialty pharmaceutical company focused on CNS diseases.

We use our proprietary technologies to enhance the therapeutic benefits of approved anti-epileptic drugs, or AEDs through advanced extended release formulations. Our most advanced product candidates, SPN-538 and Epliga, are novel oral once-daily extended release formulations of topiramate and oxcarbazepine, respectively; for the treatment of epilepsy. Immediate release formulations of topiramate and oxcarbazepine, are available in generic form and are marketed by Johnson & Johnson and Novartis under the brand names of Topamax and Trileptal, respectively. According to IMS Health, peak sales of Topamax and Trileptal represented an estimated 25.8% and 8.1% of the total seizure disorder market in 2008 and 2006, respectively. We are pursuing a Section 505(b)(2) regulatory strategy for SPN-538 and Epliga, which would allow us to rely on the existing data from the NDAs of Topamax and Trileptal, respectively. The once-per-day dosing of each of SPN-538 and Epliga is designed to improve patient compliance and to provide a better tolerability profile compared to the current immediate release AEDs that are taken multiple times per day to maintain therapeutic drug concentrations over the dosing interval. We believe there is a significant unmet need for extended release products, such as SPN-538 and Epliga, for the treatment of epilepsy. Extended release products have been shown to improve compliance, increase seizure control, reduce side effects and improve tolerability as compared to immediate release products, which can lead to fewer side effects, better tolerability, increased seizure control and greater patient compliance.

We are also developing treatments for new indications in diseases such as ADHD and its coexisting disorders. We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the U.S. Food and Drug Administration, or FDA, SPN-810 could be the first product available to address this serious, unmet medical need. SPN-810 is based on molindone hydrochloride, which was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. In addition, SPN-812, which is currently in Phase II, is being developed as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. In addition, because the active ingredient of SPN-812 has demonstrated efficacy as an antidepressant in Europe, this product candidate may provide increased benefit to an estimated 40% of ADHD patients who suffer from depression.

In addition to these four lead product candidates, we have a number of other product candidates in various stages of development such as SPN-809, which would represent a novel mechanism of action for the U.S. antidepressant market.

The table below summarizes our current pipeline of novel product candidates.

Product	Indication	Status
SPN-538	Epilepsy	NDA to be filed Q1 2011
Epliga	Epilepsy	Phase III
SPN-810	Impulsive Aggression in ADHD	Phase II
SPN-812	ADHD	Phase II
SPN-809	Depression	IND filed

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and enable the treatment of new indications. We have a broad portfolio of drug development technologies consisting of six platforms that include the following: Microtrol (multiparticulate delivery platform), Solutrol (matrix delivery platform) and EnSoTrol (osmotic delivery system). Our proprietary technologies have been used in the following approved products: Carbatrol (carbamazepine), Adderall XR (mixed amphetamine salts), and Intuniv (guanfacine), marketed by Shire; Equetro (carbamazepine), marketed by Validus Pharmaceuticals Inc.; Sanctura XR (trospium chloride), marketed by Allergan; and Oracea (doxycycline), marketed by Galderma. We are continuing to expand our intellectual property portfolio to provide additional protection for our technologies and our product candidates. Throughout our 20 year history, we have continued our commitment to innovation with a focus for the past five years on successfully developing our own product candidates in neurology and psychiatry.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry. Key elements of our strategy to achieve this goal are to:

- *Build in-house sales and marketing capabilities, focused on specialty markets in the United States, to promote SPN-538 and Epliga*. We are currently focused on attaining regulatory approval for, and bringing our two late-stage epilepsy products, SPN-538 and Epliga, to market. As SPN-538 and Epliga progress towards U.S. regulatory approval, we intend to build our own targeted, specialty sales force to promote, if approved, SPN-538 and Epliga in the United States. We intend to direct our marketing efforts to high potential prescribers of both products.

- *Continue to advance our product candidates in our psychiatry portfolio, including SPN-810 and SPN-812*. As part of our longer term strategy, we intend to further develop our product candidates in our psychiatry portfolio to enable further diversification of our pipeline and future growth. For example, we are currently preparing to initiate a Phase IIb trial for SPN-810.

- *Develop differentiated products by applying our technologies to known drug compounds*. We intend to continue to focus our development activities on known drug compounds and compounds with established mechanisms of action and thereby reduce the risks, costs and time typically associated with pharmaceutical product development. We intend to leverage our proprietary and in-licensed technologies and expand our patent portfolio to further develop and protect our diverse pipeline of product candidates.

- *Establish strategic partnerships to accelerate and maximize the potential of our product candidates worldwide*. We intend to continue to seek strategic collaborations with other pharmaceutical companies to commercialize our product candidates outside the United States. We believe that

we are an attractive collaborator for pharmaceutical companies due to our broad portfolio of proprietary technologies and our product development track record.

- *Leverage our management team's expertise to develop and commercialize our broad portfolio of product candidates.* We intend to leverage the expertise of our executive management team in developing and commercializing innovative therapeutic products. We plan to continue to evaluate and develop additional CNS product candidates that we believe have significant commercial potential through our internal research and development efforts or, if appropriate, external collaborations.

Epilepsy

Overview

Epilepsy is a complex neurological disorder characterized by spontaneous recurrence of unprovoked seizures, which are sudden surges of electrical activity in the brain that impair a person's mental or physical abilities. Epilepsy, which is typically diagnosed by a neurologist, is estimated to affect 50 million people worldwide. According to IMS Health, U.S. sales of AEDs were approximately $5.3 billion in 2009. The annual cost of epilepsy is estimated to be $12.5 billion.

Epileptic seizures can cause a person to experience severe muscle jerking, to lose consciousness and fall, or to suffer from distorted vision, all potentially leading to physical injuries or hospitalization. Until reliable seizure control has been achieved, patients are forced to adjust their lifestyles to avoid activities that a seizure can significantly disrupt or render life threatening. A breakthrough seizure is a sudden, unexpected seizure experienced by a patient who previously had achieved reliable seizure control. Even when no physical injury occurs, breakthrough seizures often result in significant social, legal and developmental consequences for patients such as loss of driver's license, loss of employment, disruption of school attendance, academic underachievement, and disruption of social networks. In addition, a single breakthrough seizure can lead to permanent loss or reduction in overall seizure control. Data suggest that a significant proportion of patients who experience a breakthrough seizure have a lower chance of achieving reliable seizure control. In certain cases, a single breakthrough seizure can develop into *status epilepticus*, a prolonged seizure or series of repeated seizures, and eventually result in brain damage or death. Data indicate that the risk of sudden unexpected death in epilepsy was 23 times higher in patients who had at least one breakthrough seizure compared to patients who had achieved seizure control.

Current Treatment Options

Once a patient is diagnosed with epilepsy, the goal of the neurologist is to find the particular drug or combination of drugs, and appropriate dosing, that will lead the patient to reliable seizure control while minimizing side effects. There are currently over 15 approved AEDs marketed in the United States. Side effects play a major role in altering treatment in epilepsy as they can limit the usefulness of AEDs. AEDs are generally associated with the incidence of numerous side effects that can adversely impact the quality of life for epileptic patients. Such side effects may include dizziness, paresthesia, headaches, cognitive deficiencies such as memory loss and speech impediment, digestive problems, somnolence, double vision, gingival enlargement, nausea, weight gain, and fatigue. To address these side effects and help patients tolerate their AEDs, neurologists typically initiate treatment with a single AED as monotherapy at a low dose then increase the dose to a higher level until the patient reaches the most efficacious dose with an acceptable tolerance of side effects.

Many patients develop refractory epilepsy, which refers to inadequate control of seizures despite treatment, thereby requiring treatment with multiple AEDs. Patients taking more than one AED at a time are susceptible to side effects associated with each of the multiple drugs and with drug interactions. Despite the introduction of new AEDs in the past few years, drug therapy remains

ineffective for seizure control in up to 30% of patients with epilepsy. Many patients fail drug therapy either because the drugs do not control their seizures or because they cannot tolerate the side effects.

Dynamics of the Epilepsy Market

There are several important dynamics that play a major role in the treatment of epilepsy and that differentiate epilepsy from many other diseases:

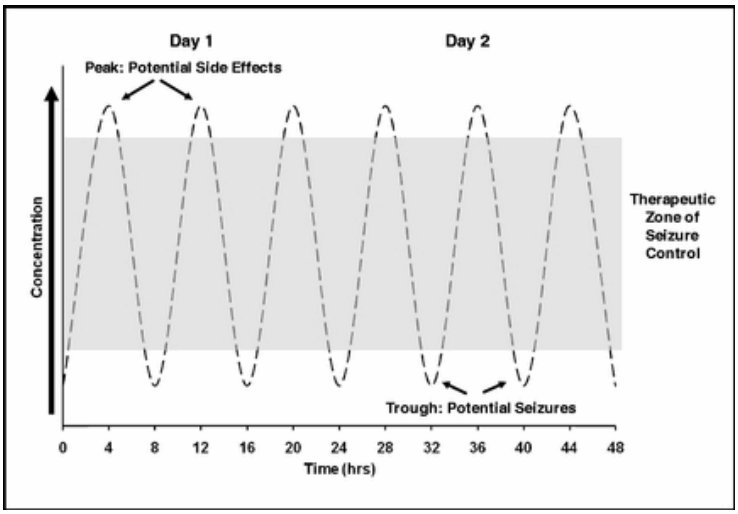
- ***Compliance is Critical to the Reduction in Breakthrough Seizures***

Compliance with drug treatment regimens is critically important to achieving effective therapy for patients with epilepsy where the consequences of non-compliance can be life threatening. Patient non-compliance with AED therapy is a serious issue and remains one of the most common causes of breakthrough seizures. Not only is taking all prescribed doses critical for epileptic patients, but the timing of when patients take their prescribed doses is also important. Typically, non-compliance is caused by frequent or multiple dosing, serious side effects, or a lack of tolerability. A 2002 survey undertaken by neurologists in the United States revealed that at least once per month, 71% of patients with epilepsy forgot to take their AED, and it was evident that the chances of a patient missing a dose increased with the number of tablets prescribed. Of patients that missed a dose, 45% reported a breakthrough seizure. Patients taking a larger number of tablets/capsules further increased their odds of having a breakthrough seizure after a missed dose by 43%. In addition, other studies have shown reduced rates in breakthrough seizures as a result of improved compliance with AED treatment regimens.

- ***Immediate Release Products Have Serious Side Effects and Lack of Tolerability***

The FDA has recognized AEDs as being "critical dose drugs," drugs in which a comparatively small difference in dose or concentration may lead to serious therapeutic failures and/or serious side effects. Immediate release formulations of AEDs necessitate frequent administration to maintain appropriate drug concentrations. However, these immediate release formulations cause wide fluctuations of blood levels of the active drug during the day, with peak concentrations when the drug is released and potentially sub-therapeutic concentrations thereafter. At least one study has shown that complaints of side effects typically occur when blood levels exceed certain concentrations, particularly at high doses, and the risk of breakthrough seizures can occur when blood levels are below certain minimum effective levels, as indicated in the chart below.

Simulated Plasma Concentration-Time Curve at Steady State of Immediate Release Anti-Epileptic Drug Administered Over Two Days



Source: Pellock, JM et al, Epilepsy & Behavior 5 (2004), 302

- ***Generic Substitution Can Cause an Increase in Breakthrough Seizures***

Patients today are most typically switched from branded drugs to generics, or from one generic drug to another, mainly to reduce cost. In most states, unless a physician explicitly writes "dispense as written" or "no substitution," pharmacists can switch a patient to a lower-cost generic drug without the consent of either the patient or the physician. Epilepsy patients are particularly vulnerable to changes in their drugs. Slight variations in the blood concentrations of these drugs could lead to the occurrence of breakthrough seizures. Accordingly, despite existing regulatory criteria to ensure the bioequivalence of generic drugs, the "switch-back" rates of AEDs (that is, the frequency of an individual being returned to his or her previous branded product under a physician's guidance) is much higher than for many other drug products. For example, in a 2008 study, the rates of patients switching back from generics to branded drugs because of adverse events were found to be 20.8% to 44.1% for AEDs compared to 7.7% to 9.1% for non-AEDs.

A number of epilepsy advocacy groups such as the Epilepsy Foundation, the American Academy of Neurology, the Centers for Medicare and Medicaid Services and several regulatory agencies around the world, including the UK National Institute for Health and Clinical Excellence (NICE), Sweden's Medical Products Agency (MPA) and other European agencies, have all acknowledged that AED generic substitutions for non-therapeutic reasons can be harmful and should either be limited or not permitted, and have issued guidelines, recommendations or taken affirmative steps to limit such substitutions. While we are not aware of any well-controlled studies conducted to establish unequivocal scientific evidence that generic substitutions cause increased incidence of breakthrough seizures, the FDA is currently considering stricter standards of bioequivalence for generics and its Pharmaceutical Science and Clinical Pharmacology Advisory Committee voted 11-2 that the current bioequivalence standards are insufficient for critical dose drugs such as AEDs.

- ***Physicians are Reluctant to Switch to New Chemical Entities***

In the epilepsy market, new chemical entities, or NCEs, generally lack the same appeal that would typically be associated with a new drug for other indications. Based on prescription data from 1994 to 2005 for NCE launches for seizure disorders, such NCEs, on average, experienced slow market

penetration characterized by a 0.58 to 1.1 market share point gain on an annual basis. We believe this is because physicians are often reluctant to change a stable patient's existing therapy and risk a breakthrough seizure in the patient. Despite the introduction of several NCEs over the past decade, a significant number of epileptic patients continue to lack reliable seizure control. Many NCEs continue to be associated with several side effects. Therefore, many older and existing drugs continue to be prescribed and their prescription levels have either been maintained since their peak or declined very slowly.

Benefits of Extended Release Products in the Epilepsy Market

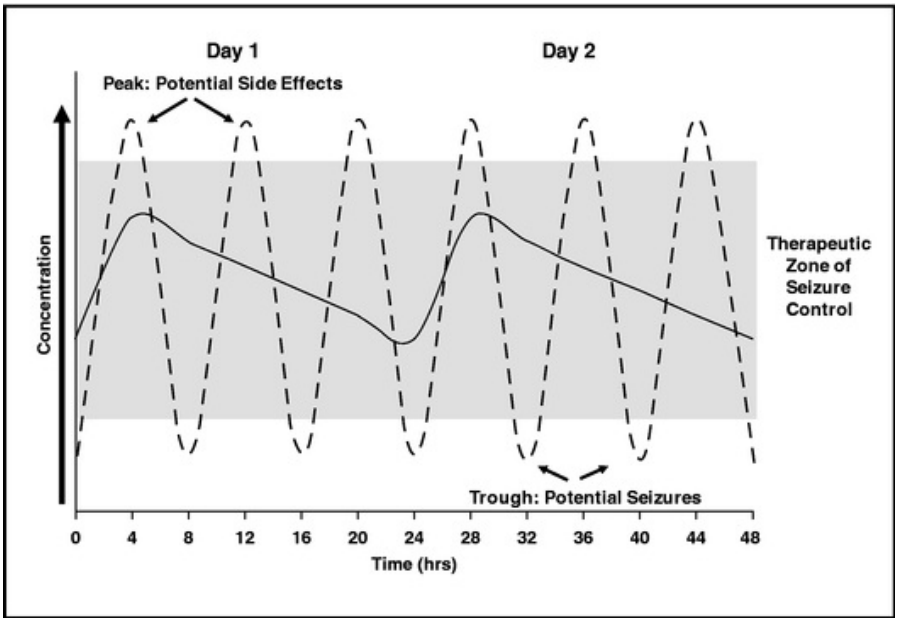
- ***Extended Release Products Improve Compliance and Reduce Breakthrough Seizures***

Achieving reliable seizure control for patients and avoiding the serious health and life dangers that can be associated with breakthrough seizures depends on patients being compliant and diligent in taking their medications. Frequent and multiple dosing, side effects and lack of tolerability of the immediate release products can significantly contribute to patients forgetting doses or skipping them. Even taking a second or third dose later than the scheduled time may place a patient at an increased risk of a breakthrough seizure because the drug level in the patient's blood could drop below the minimum effective therapeutic level that prevents such seizures. We believe increased patient compliance can be achieved with extended release products that offer once-daily dosing, reduced side effects and improved tolerability. We believe physicians understand that the release profiles of extended release products can produce more consistent and steadier blood levels as compared to immediate release products, resulting in fewer side effects and better tolerability that further help patients to be compliant, have fewer breakthrough seizures and, correspondingly, enjoy a better quality of life.

- ***Extended Release Products Reduce Side Effects and Improve Tolerability***

When extended release formulations are used appropriately, drug levels remain within the patient's therapeutic zone, thereby reducing patient exposure to fluctuating drug levels, which may exacerbate side effects or induce breakthrough seizures. Because extended release formulations can reduce peak concentrations, it may also be possible to adjust doses upward to a more efficacious level without exacerbating side effects associated with peak concentrations. Extended release formulations can also reduce the frequency and the extent of the troughs, or lower concentrations of the drug in the blood, thereby avoiding concentrations below the minimum effective concentrations that can increase the risk of breakthrough seizures.

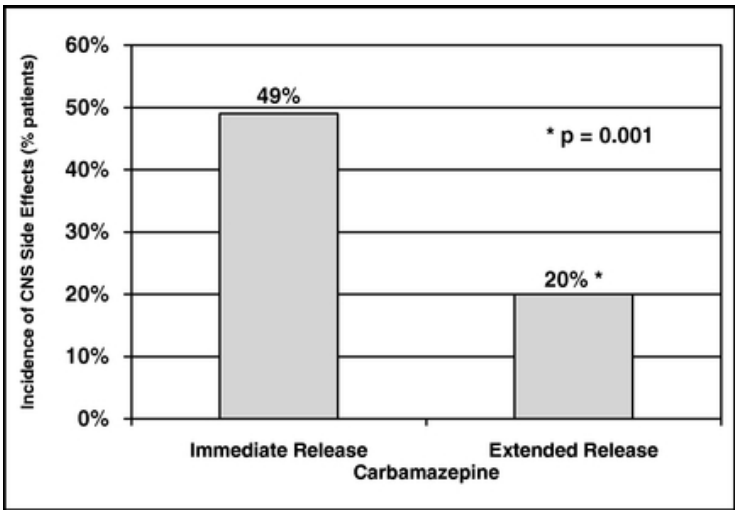
Simulated Plasma Concentration-Time Curve at Steady State of Immediate Release and Extended Release Anti-Epileptic Drug Administered Over Two Days



Source: Pellock, JM et al, Epilepsy & Behavior 5 (2004), 302

The enhanced safety profile of extended release products as compared to similar immediate release products has been supported by several studies. For example, in a 2004 published trial conducted by physicians at Johns Hopkins, Carbatrol, an anti-epileptic extended release carbamazepine product that uses our Microtrol technology, and Tegretol XR, another extended release carbamazepine product, demonstrated better tolerability and side effect profiles than comparable immediate release products. The trial reported that 49% of patients had side effects during treatment with immediate release carbamazepine such as sedation, double-vision, confusion, ataxia, dizziness or poor coordination, whereas with extended release carbamazepine treatments, only 20% of patients reported these side effects.

Reduction in CNS Side Effects Following Conversion to Carbamazepine Extended Release from Immediate Release Preparation



Source: Miller AD et al., Acta Neurol. Scand 2004: 109: 374-377

Equally as important, the patients in the trial tolerated high doses of extended release carbamazepine significantly better than high doses of immediate release carbamazepine. Specifically, 63% of patients treated with 1200 mg or more per day of immediate release carbamazepine developed side effects, yet only 12% of patients experienced side effects while taking similar doses of extended release carbamazepine. The investigators surmised that the improved tolerability of extended release carbamazepine at high doses may provide a treatment option for patients previously discontinuing immediate release carbamazepine because of dose-limiting side effects.

Other products where reductions in side effects were reported by patients when switching from immediate release to extended release formulations include Depakote ER (divalproex sodium extended release) and Keppra XR (levetiracetam extended release).

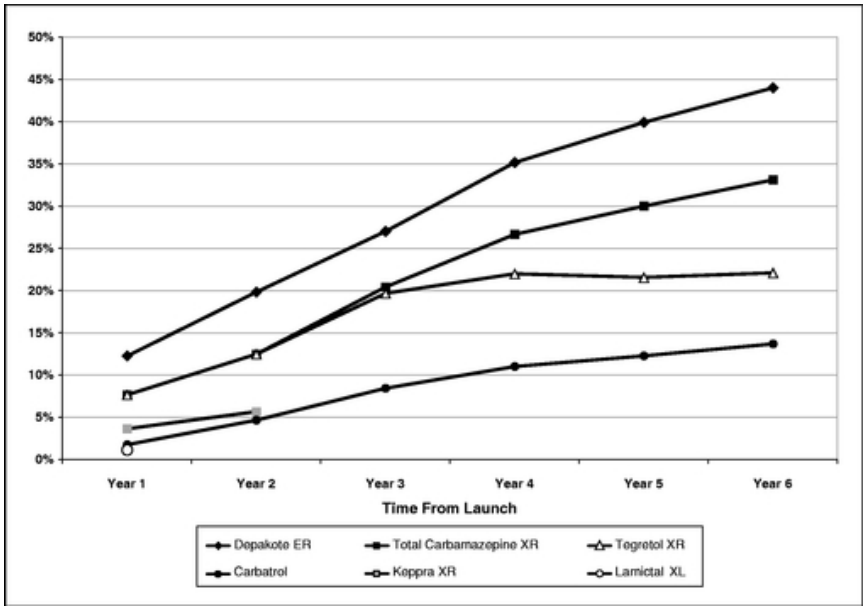
- ***Managed Care Does Not Limit Success of Extended Release Products***

Given the serious nature of epilepsy and the key dynamics in the epilepsy market, we believe managed care plans acknowledge the important benefits of extended release AED products and, therefore, have not limited the success of such products even when lower cost generic immediate release products are available. For example, according to industry data, the recent launches of extended release products Keppra XR and Lamictal XL have enjoyed acceptance rates by managed care plans that are similar to those of the corresponding immediate release products. Most managed care plans also acknowledge the position of several patient advocacy groups and the American Academy of Neurology regarding the risks of generic substitution of AEDs, including potential for breakthrough seizures. Although switching to a low-cost generic AED may initially offer some cost savings, we believe they also recognize that the risk and cost of one breakthrough seizure outweighs the potential savings from generics. For example, the healthcare costs associated with the treatment of patients who experience breakthrough seizures, which may run in excess of $26,000 per patient on an annual basis, is significantly greater than any cost savings per patient that may be achieved through switching to a low-cost generic AED. According to a 2009 survey, the total healthcare costs for patients using branded topiramate products were approximately 20% lower than for patients using multiple generic topiramate products.

- ***Extended Release Products Perform Well in the Market***

Extended release products have performed well in the epilepsy market, even in the face of immediate release generic products. Moreover, prescription data for seizure disorder drugs from 1994 to 2005 shows that extended release products perform better than NCEs during the first five years of their launch. Currently, there are five extended release AEDs on the market (Tegretol XR, Carbatrol, Depakote ER, Lamictal XL, Keppra XR), and each of these products has gained significant market penetration as measured by the total prescriptions written for each specific molecule. For example, as reflected in the chart below, Depakote ER gained almost 40% of all divalproex prescriptions, including immediate release versions of Depakote and generic divalproex, in its fifth year after launch.

Comparison of Molecule Conversion of Extended Release Anti-Epilepsy Drugs
(measured as percentage of total prescriptions for each individual molecule)



Source: IMS Health

Our Late-Stage Neurology Portfolio

We are developing a promising epilepsy product portfolio consisting of SPN-538 and Epliga that utilize our proprietary technologies, Microtrol and Solutrol, respectively, each of which has been proven and validated through use in products that are currently on the market. Among them is Carbatrol, an AED that has been shown to reduce side effects compared to immediate release carbamazepine products. We believe that our 20 years of history and portfolio of technologies have enabled us to develop highly-customized product candidates that overcome challenges with the molecules' pharmacokinetic profiles. Our differentiated approach to product development and the strength of our technologies have allowed us to develop SPN-538 with what we believe to be a unique pharmacokinetic profile and to develop a once-daily formulation of oxcarbazepine with Epliga where others have failed.

SPN-538 and Epliga are novel extended release formulations of two well known and approved AEDs, topiramate and oxcarbazepine, respectively. Both product candidates are designed to offer epilepsy patients effective therapy, reduced side effects and improved compliance with once-per-day dosing. We believe that by delivering more consistent and steady maintenance of blood level concentrations of topiramate and oxcarbazepine, our product candidates can reduce adverse side effects

and improve tolerability of the drugs, which can improve compliance and enable patients to benefit from better seizure control and fewer breakthrough seizures as compared to similar immediate release products. Given that SPN-538 and Epliga are based on different drug compounds and different mechanisms of action, they would target different market segments and patient populations within the epilepsy market.

We currently expect to file the NDA for SPN-538 in the first quarter of 2011 and the NDA for Epliga in the second half of 2011. The development and regulatory strategy for both products follows a Section 505(b)(2) pathway, which allows us to rely upon FDA's previous findings of safety and efficacy for two known and approved products, Topamax and Trileptal. Therefore, our NDAs are not required to have the same amount of safety or efficacy data as would be required in the case of an NCE, and each NDA could contain different types of clinical trials and clinical data.

SPN-538 (extended release topiramate)

Our most advanced product candidate is SPN-538, a novel oral once-daily extended release topiramate product for the treatment of epilepsy. We expect to file the NDA for this product candidate in the first quarter of 2011. We have completed ten clinical trials in support of our NDA. SPN-538 delivers topiramate, one of the most effective AEDs, which is marketed by Johnson & Johnson under the brand name Topamax and is also available in a generic form. Topiramate is currently available only in immediate release form and is indicated for monotherapy and adjunctive therapy of epilepsy and for the treatment of migraine. Topamax reached peak worldwide sales of $2.7 billion in 2008, before generic products entered the U.S. market in March 2009. With approximately 9.1 million total topiramate prescriptions in 2009, topiramate continues to represent a significant portion of prescriptions with approximately 8.7% of total prescriptions. Topiramate is believed to work in epilepsy through various mechanisms. It enhances the inhibitory effect of the GABA (Gamma-Aminobutyric Acid) neurotransmitter that regulates neuronal excitability throughout the nervous system, blocks the excitatory effect of the glutamate neurotransmitter, blocks the sodium channel and inhibits the carbonic anhydrase enzyme. The side effects associated with taking topiramate, which have tended to limit its use, include, among others, dizziness, fatigue, somnolence and slowing of certain cognitive functions. We believe that this creates an opportunity for us to offer patients SPN-538 as an alternative therapy to immediate release topiramate with an improved once-per-day profile.

SPN-538 is designed to improve patient compliance and to have a better tolerability profile compared to the current immediate release products that are taken multiple times per day. SPN-538's pharmacokinetic profile delivers lower peak plasma concentrations and lower input rate over an extended time period resulting in smoother and more consistent blood levels of topiramate during the day compared to immediate release Topamax. We believe such a profile avoids blood level fluctuations that are typically associated with many of the side effects or breakthrough seizures that patients can suffer when taking immediate release products. These side effects can lead patients to skipping doses, and such non-compliance, which could place them at higher risk for breakthrough seizures.

SPN-538 Development Program

We have completed ten clinical trials, including bioequivalence trials, in support of our NDA for SPN-538, which we expect to file in the first quarter of 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which would allow us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Topamax. The various clinical trials conducted on SPN-538 were designed to select the best extended release once-per-day formulation that delivers equivalent levels of topiramate compared to the immediate release twice-per-day Topamax product, as well as to test the robustness and consistency of our technology in delivering the once-per-day formulation across a full range of product strengths. We also have scaled up production of the product candidate at our commercial contract manufacturing facility and have conducted studies that confirm that the

commercial scale product is bio-equivalent to the clinical product that was initially developed at our research laboratories.

Commercialization Strategy

If we are successful in obtaining regulatory approval, we believe that SPN-538 will be the first once-daily topiramate product approved for the monotherapy and adjunct therapy of epilepsy. We believe that SPN-538 could, over time, capture a significant share of the topiramate prescriptions, consistent with the performance of similar extended release products that have been introduced in the U.S. epilepsy market over the past 15 years. Upon the launch of SPN-538, we plan to build a small specialty sales force primarily targeting neurologists to promote the use of SPN-538 in epilepsy in the United States. This physician group is responsible for a substantial portion of the prescriptions for the treatment of epilepsy and, accordingly, provides an attractive, focused market opportunity for us.

Epliga (extended release oxcarbazepine)

Our second late-stage product candidate, Epliga, is a novel oral once-daily extended release formulation of oxcarbazepine and is currently in a Phase III clinical trial for the treatment of epilepsy. We currently anticipate having data from the Phase III trial available early in 2011, and expect to file an NDA in the second half of 2011. To date, we have conducted eight clinical trials to support the filing of an NDA.

Epliga delivers oxcarbazepine, another effective AED, which is marketed by Novartis under the brand name Trileptal and is available in a generic form. Trileptal was initially developed and approved in the United States in 2000. Trileptal is indicated for monotherapy and adjunctive therapy of epilepsy. It reached peak worldwide sales of $721 million in 2006, before generic products entered the U.S. market in October 2007. With approximately 3.3 million total oxcarbazepine prescriptions in 2009, oxcarbazepine represents a portion of prescription of prescriptions with approximately 3.2% of total prescriptions. Oxcarbazepine is an active voltage-dependent sodium channel blocker that, despite its effectiveness in treating epilepsy, is associated with many side effects that tend to limit its use. The side effects associated with taking oxcarbazepine include, among others, dizziness, double vision, somnolence, nausea and vomiting. Epliga has been designed to reduce side effects, resulting in improved patient compliance and tolerability.

With its novel pharmacokinetic profile that delivers lower peak plasma concentrations, slower rate of input and smoother and more consistent blood levels compared to immediate release products such as Trileptal, we believe Epliga has the potential of improving the tolerability of oxcarbazepine by reducing the side effects experienced by patients. This could enable more patients to effectively tolerate higher doses of oxcarbazepine, which would permit them to benefit from the resulting efficacy and greater seizure control that have been previously reported in patients at higher doses. In addition, Epliga's once-per-day dosing is designed to improve patient compliance compared to the current immediate release products that are taken multiple times per day.

Epliga Development Program

We have completed eight clinical trials, including bioequivalence trials, to support filing the NDA in the second half of 2011. We are pursuing a Section 505(b)(2) regulatory strategy, which would allow us to rely in our filing on the existing data and knowledge the FDA has from the NDA of Trileptal. The various clinical trials conducted on Epliga were designed to select the best extended release once-per-day formulation that delivers equivalent levels of oxcarbazepine compared to immediate release twice-per-day Trileptal, as well as to test the robustness and consistency of our technology in delivering the once-per-day formulation across a full range of product strengths. We also have scaled up our production of the product candidate at our commercial contract manufacturing facility, which has produced clinical supplies to conduct our Phase III trial.

In our pilot clinical trial in 32 healthy subjects, Epliga demonstrated a superior adverse event profile when compared to the immediate release oxcarbazepine therapy Trileptal. In this trial, a single center, open-label, randomized, two-way crossover, two-sequence trial, we compared multiple dose administration of Epliga tablets and Trileptal tablets in 32 healthy adult volunteers under fasting conditions. While the steady-state crossover comparison trial was designed to evaluate the steady-state bioavailability of the different formulations of oral oxcarbazepine at 1200 mg doses, the trial also assessed the safety and tolerability of repeat oral dosing of Epliga tablets in healthy subjects at 1200 mg in comparison to Trileptal.

In this trial, the adverse events in the trial were observed in 30 healthy subjects using a total daily dose of 1200 mg of each of Trileptal and Epliga. There were 190 total adverse events reported for Trileptal, while Epliga generated a total of only 120 adverse events, a reduction of 37%. Of these, a total of 197 adverse events were considered by the principal investigator to be possibly drug related: 131 for Trileptal and 66 for Epliga. More specifically, Trileptal demonstrated a 36.7% occurrence rate of dizziness as compared to Epliga which demonstrated a 0.0% occurrence rate in our trial. In other trials, Epliga demonstrated higher occurrence rates of dizziness. The results from these trials and the pilot clinical trial are preliminary and based on small populations, and may not be predictive of the results in the pivotal Phase III trial.

In the pivotal Phase III trial for Trileptal, refractory patients had increasing reductions in seizures as dose levels increased, including 50% median reduction in seizures at the highest dose of 2400 mg. Of those subjects at 2400 mg, 22% of the subjects were seizure free at the highest dose of 2400 mg. However, Trileptal is not without a host of side effects at the highest doses, which result in many subjects discontinuing treatment. Accordingly, while 22% of subjects were seizure-free during the pivotal trial for Trileptal at the highest dose of 2400 mg, approximately three-quarters of subjects at the highest dose discontinued their participation in the trial, largely because of the adverse events associated with the drug.

We have discussed our Phase III trial for Epliga with the FDA in the form of a Special Protocol Assessment, or SPA. The Phase III protocol will assess the safety and effectiveness of Epliga as an adjunctive therapy in patients with a diagnosis of simple partial seizures and complex partial seizures with or without secondarily generalized seizures as confirmed by the 1981 and 1989 International League Against Epilepsy Classifications. Epilepsy can be broadly characterized into partial and generalized seizures. Partial seizures occur in a specific location of the brain, affecting the physical or mental activity controlled by that particular area of the brain, whereas generalized seizures occur throughout both hemispheres of the brain at once. Partial seizures may be further subdivided into both simple and complex seizures. This refers to the effect of such a seizure on consciousness; simple seizures cause no interruption to consciousness (although they may cause sensory distortions or other sensations), whereas complex seizures interrupt consciousness to varying degrees.

The Phase III trial is a multi-center, multiple-dose, randomized (1:1:1 ratio), double-blind, placebo-controlled, three-arm, parallel group trial in male and female subjects (18 to 65 years of age, inclusive) with refractory partial epilepsy on at least one and up to three concomitant AEDs. Enrollment in the trial has been completed with a total of 369 patients enrolled across 103 sites and 8 different countries in North America and Europe. Patients will be randomized to one of three treatment groups and will take Epliga (1200 mg/day or 2400 mg/day) or placebo.

The primary objective of the trial is to evaluate the efficacy of Epliga as an adjunctive therapy in the treatment of seizures of partial origin in adults with refractory epilepsy on at least one and up to three other AEDs. The secondary objectives are:

- To assess the safety and tolerability of adjunctive Epliga in the treatment of seizures of partial origin in subjects with refractory epilepsy on at least one and up to three other AEDs;

- To assess the effect of Epliga on the subject's global impression of change in his/her epilepsy status;
- To assess the effect of Epliga on quality of life as assessed by the Quality of Life in Epilepsy Inventory-31, which is a measurement tool of the overall impact of an AED on a patient; and
- To assess secondarily generalized seizures for each treatment group.

We expect top-line data from this trial to be available in the first quarter of 2011 and, based on such data, to file the NDA in the second half of 2011.

Commercialization Strategy

If we are successful in obtaining regulatory approval, we expect Epliga to be the only once-daily oxcarbazepine product indicated for the treatment of epilepsy and to compete against the existing immediate release oxcarbazepine products on the market. We believe that Epliga could, over time, capture a significant share of the oxcarbazepine prescription market, consistent with the performance of similar extended release products that have been introduced in the U.S. epilepsy market over the past 15 years. To support the commercial launch of Epliga, we plan to further expand our U.S. specialty sales force in epilepsy to promote both SPN-538 and Epliga.

ADHD

Overview

ADHD is a common CNS disorder characterized by developmentally inappropriate levels of inattention, hyperactivity, and impulsivity. ADHD affects an estimated 6.9% of all school-age children and 4.4% of adults in the United States. An estimated 60% to 80% of children with ADHD continue to meet criteria for ADHD into adolescence. In 2008, the U.S. market for ADHD prescription drugs was more than $4 billion.

Diagnosis of ADHD requires a comprehensive clinical evaluation based on identifying patients who exhibit the core symptoms of inattention, hyperactivity, and impulsivity. Generally, behavior is sufficiently severe and persistent to cause functional impairment. Although many children may be inattentive, hyperactive or impulsive, the level of severity and degree of functional impairment, as well as considerations of what may be behind the underlying symptoms, determine which children meet the diagnosis and are treated for ADHD. It is estimated that the annual societal cost of illness for ADHD is more than $36 billion.

Current Treatment Options

Since Ritalin was introduced, stimulant therapies have grown to become the most common form of treatment for ADHD. Studies indicate that approximately 80% of ADHD patients respond to stimulants. A key difference between older and newer oral stimulants is the duration of action. Most of the older stimulants, representing approximately 35% of total oral stimulant prescriptions, are immediate release products that last approximately four hours, requiring multiple administrations throughout the day. In contrast, most of the recently launched products, representing approximately 65% of total oral stimulant prescriptions, are extended release formulations that last up to twelve hours or more.

While stimulant treatments calm and improve the concentration of ADHD patients, these drugs have been shown to have various side effects including loss of appetite, insomnia and, to a lesser degree, cardiovascular effects. Stimulant treatments are controlled substances and can be associated with social stigma and the potential for abuse. Approximately 30% of patients with ADHD are non-responsive to or non-tolerant of treatment with stimulants. Non-stimulants offer physicians an alternative ADHD therapy, including for patients who have coexisting conditions, such as conduct disorder, major depressive disorder, or bipolar disorder, that are contraindicated for stimulant use based on the risk for stimulant abuse.

Coexisting Conditions

Studies show that as many as 67% of children who have ADHD may have coexisting conditions such as oppositional defiant disorder, conduct disorder, anxiety disorder and depression. Approximately 25% of children with ADHD also exhibit persistent conduct problems, such as impulsive aggression. Untreated, these serious conduct problems can place patients at risk of persistent aggressive and anti-social behavior, such as knowingly destroying property, physically attacking people and bullying. These patients also face an increased risk of suicidal behavior, and are at high risk of entering the juvenile justice system and developing substance abuse problems later in adulthood.

Aggression is usually divided into two subtypes: predatory (i.e., "cold") aggression, which can be described as goal-oriented, controlled and/or planned, and impulsive or affective ("hot") aggression, which can be described as reactive, unplanned and/or uncontrolled. Patients with ADHD who exhibit aggression commonly demonstrate the "hot," or impulsive, type of aggression. For these patients, this "hot" aggression is generally recurrent, occurs outside of a justifiable social context, has intensity, frequency, duration or severity that is disproportionate to its triggers and causes distress and impairment to the patient. Impulsive aggression represents a broad category of maladaptive, aggressive behaviors that can complicate the management of ADHD, autism, bipolar disorder, post-traumatic stress disorder and other psychiatric disorders.

Current Treatments for Impulsive Aggression in Patients with ADHD

Currently, there are no approved medications for treating impulsive aggression in patients with ADHD. The current treatment options for impulsive aggression in patients with ADHD include psychosocial interventions, such as school- or family-based behavioral therapies, which are usually not wholly effective. In a seminal clinical trial designed by experts from key stakeholder communities such as the National Institute of Mental Health, researchers observed that after 14 months of either ADHD medication-only or a regimen that combined ADHD medication with behavioral interventions, 44% of those children with ADHD (or 26% of the total sample size in the trial) who exhibited initial aggression still had what can be described as impulsive aggression at the end of the trial, demonstrating that psychosocial interventions may not work for a large percentage of children with ADHD who exhibit aggressive behaviors.

In response, doctors have also tried to address this group with off-label use of prescription medicines, such as mood stabilizers, stimulants and anti-psychotic drugs. Results have varied, but anti-psychotic drugs appear to have the best therapeutic potential. Unfortunately, many of these agents are associated with adverse effects including obesity, lipid abnormalities, and diabetes, which is of particular concern when treating pediatric populations.

Our Psychiatry Portfolio

Our psychiatry portfolio includes three product candidates for the treatment of ADHD or its coexisting conditions and one product candidate for depression, each of which is designed to bring important advancements in therapy.

SPN-810 (molindone hydrochloride)

We are developing SPN-810, which is currently in Phase II, as a novel treatment for impulsive aggression in patients with ADHD. If approved by the FDA, SPN-810 could be the first product available to address this serious, unmet medical need.

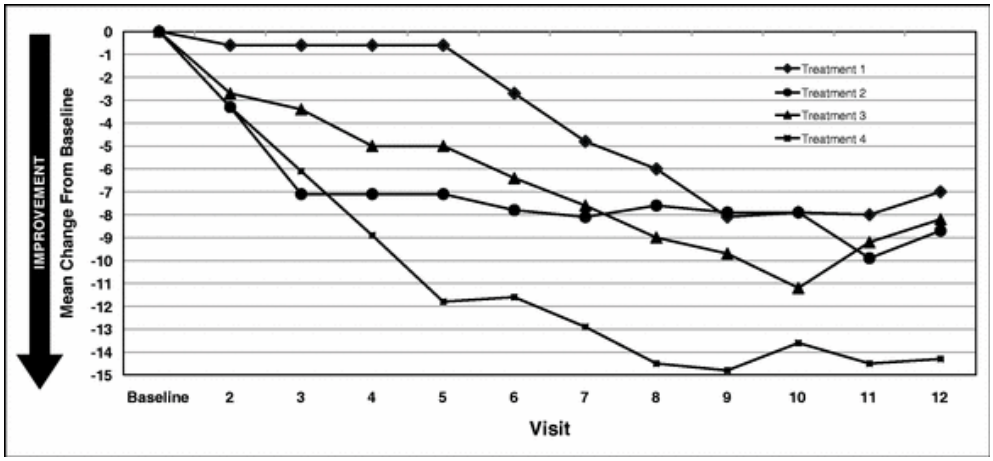
We are studying SPN-810, which contains molindone hydrochloride, as a treatment of impulsive aggression in patients with ADHD. Molindone hydrochloride was previously marketed in the United States as an anti-psychotic to treat schizophrenia under the trade name Moban. Molindone

hydrochloride is unusual among anti-psychotics in that it is not associated with weight gain. In addition, we believe the lower doses tested for the proposed indication of impulsive aggression should be more easily tolerated than the higher doses approved to treat schizophrenia. SPN-810's low potential to cause weight gain leads us to believe that SPN-810 could be an attractive candidate among the anti-psychotic drugs for the effective treatment of impulsive aggression in patients with ADHD. Although initially we are developing SPN-810 as a treatment of impulsive aggression, if we are successful in demonstrating the effectiveness of SPN-810 for the treatment of impulsive aggresion in patients with ADHD, we may then look to develop the product candidate for the treatment of other patient populations that have impulsive aggression, such as autism and bipolar disorder.

SPN-810 Development Program

We have completed four clinical trials for SPN-810, including a Phase IIa trial in which we tested the safety and tolerability of SPN-810, immediate release molindone hydrochloride, in patients with ADHD who suffer from serious persistent conduct problems. This open-label, dose-ranging trial randomized 78 children, 6-12 years of age, into one of four treatment groups, which were given four different doses of immediate release molindone hydrochloride, between 10 mg and 40 mg per day, depending on weight, three times a day over a six-week treatment period, after 2-5 weeks of titration. SPN-810 was well tolerated in the trial, with no clinically meaningful changes in standard hematology, clinical chemistry values, vital signs or electrocardiogram (ECG) results.

Besides safety and tolerability assessments, the primary outcome measure was the change in the Nisonger Child Behavior Rating Form-Typical Intelligence Quotient (NCBRF-TIQ) conduct problem subscale scores from baseline to endpoint in the intent-to-treat (ITT) population. NCBRF-TIQ is a known instrument that has been used for assessing child and adolescent behavior. Scores improved after baseline in all treatment groups. By visit 12, after 6 weeks of treatment, the mean reduction from baseline for each treatment group was 7.0, 8.7, 8.2 and 14.3, in groups 1, 2, 3, and 4, respectively, representing decreases of 34%, 34%, 32% and 55%, respectively. In addition, the difference between group 1 and group 4 was statistically significant ($p \leq 0.041$) at all time points except visit 2 and the greatest improvement in scores on the NCBRF-TIQ conduct problem subscale was seen in group 4, which was the highest-dose group (14.8 mean reduction). The below chart summarizes the mean change in NCBRF-TIQ conduct problem subscale observed in our Phase IIa trial.



NCBRF-TIQ Conduct Problem Subscale:
Mean Change from Baseline in ITT Population

Secondary outcomes included changes in other ADHD and conduct problem scales, as described in the table below. SPN-810 demonstrated improved scores over time in all treatment groups, with more marked improvements in higher-dose groups than in lower-dose groups as set out in greater detail in the table below.

% Improvement from Baseline to Last Visit,
Secondary Outcome Measures (ITT Population)

	Treatment Groups			
Outcome Measure	Group 1 n=20	Group 2 n=19	Group 3 n=19	Group 4 n=20
CGI-S				
% Improvement	23%	21%	27%	36%
SNAP-IV Subscales				
ADHD Inattention				
% Improvement	24%	31%	34%	39%
ADHD Hyperactivity/Impulsivity				
% Improvement	28%	27%	28%	41%
ADHD-Combined				
% Improvement	26%	29%	31%	40%
ODD				
% Improvement	34%	33%	28%	51%

CGI-S=Clinical Global Impression-Severity Scale, an assessment tool to rate the severity of the condition; ODD=Oppositional Defiant Disorder, a coexisting condition of ADHD; SNAP-IV=Swanson, Nolan and Pelham Questionnaire, a commonly used scale to measure ADHD.

We expect to test SPN-810 in another Phase II trial in 2011. The design and protocol of the trial have not been finalized but we expect to conduct a multicenter, randomized, double-blind, placebo-controlled trial in pediatric subjects 6 to 12 years of age with impulsive aggression in ADHD. The primary objective will be to assess the effectiveness of SPN-810 in reducing impulsive aggression after at least three weeks of treatment. Secondary objectives are likely to include measurement of the effectiveness of SPN-810 on Clinical Global Impression and ADHD scales as well as evaluation of the safety and tolerability of the drug. In addition, we will be exploring the potential added advantages of an extended-release formulation, such as greater compliance and, therefore, effectiveness in school-age children and lower unwanted side effects or interpatient variability.

SPN-812

We are developing SPN-812, which is currently in Phase II, as a novel non-stimulant treatment for ADHD. SPN-812 is a selective norepinephrine reuptake inhibitor that we believe could be more effective and have a better side effect profile than other non-stimulant treatments for ADHD. The active ingredient in SPN-812 has an extensive safety record in Europe, where it was previously marketed for many years as an antidepressant. SPN-812 has not been developed and marketed in the United States and, therefore, it would be considered and reviewed by the FDA as a new chemical entity.

SPN-812 would provide an additional option to the few non-stimulant therapies currently available. We believe that SPN-812 could be more effective than other non-stimulant therapies due to its

different pharmacological profile. Due to its demonstrated efficacy as an antidepressant, SPN-812 may exhibit increased benefit in up to an estimated 40% of ADHD patients who also suffer from major depression. We are developing an intellectual property position around the novel synthesis process for this product candidate, its novel use in ADHD and its novel delivery with extended release.

SPN-812 Development Program

We initiated a proof-of-concept Phase IIa trial in mid-2010, and we expect to get the results of this trial in the first quarter of 2011. The trial is a randomized, double-blind, placebo-controlled trial in approximately 50 adults with a current diagnosis of ADHD (approximately 25 subjects per treatment group). The subjects in the active arm will be administered SPN-812 at a single dose level three times a day over five weeks, after a one-week titration phase. The primary endpoint is the safety of SPN-812 and the secondary endpoints include, among others, the efficacy of SPN-812 as measured by Total ADHD Symptom Score on the Conners' Adult ADHD Rating Scale, a commonly-used measurement for ADHD in adults, as rated by each of the investigators and the subjects, and the effectiveness of SPN-812 when compared to placebo as determined by changes in the Clinical Global Impressions—Improvement score. Depending on the results of this Phase IIa trial, we expect to focus on potentially developing an extended release formulation and to commence a Phase IIb trial.

SPN-809

We are developing SPN-809 as a novel once-daily product candidate for the treatment of depression. SPN-809 is based on the same active ingredient as our SPN-812 product candidate. We currently have an open investigational new drug application, or IND, for SPN-809 as a treatment of depression, the indication for which the active ingredient in SPN-809 was approved and marketed in Europe for many years. Depression is a serious and common disease affecting approximately 121 million people worldwide. The worldwide market for antidepressants is approximately $12 billion.

SPN-809 is a norepinepherine reuptake inhibitor that represents an opportunity to offer a differentiated treatment option for patients suffering from depression in the United States. Initial market research suggests that psychiatrists would like to have such a once-daily option at their disposal to treat various patients. Because SPN-809 contains the same active ingredient as SPN-812, we expect that many of our activities related to the development of SPN-812 will also benefit the development of SPN-809.

Other Product Candidates

We have additional product candidates in various stages of early development that cover a range of CNS disorders.

Our Proprietary Technology Platforms

We have a long track record of developing novel products by applying proprietary technologies to known drugs to improve existing therapies and enable the treatment of new indications. Our key proprietary technology platforms include: Microtrol, Solutrol and EnSoTrol. These technologies create customized product profiles designed to meet efficacy needs, more convenient and less frequent dosing, enhanced patient compliance, and improved tolerability in certain specific applications. Our broad portfolio of technologies and extensive expertise in this area, which have been built over the past 20 years, enable us to develop products that are technically difficult to formulate or by design are made harder to be copied by others. We have employed our technologies in the development of our legacy products, as well as our current product portfolio.

Microtrol (multiparticulate delivery platform)

Microtrol is based on the use of coated and uncoated multi-particulates that can be filled into capsules, administered as a sprinkle, or compressed into tablets as varying ratios to achieve customized release profiles. The following approved and marketed products incorporate our Microtrol technology:

- Sanctura XR (trospium chloride), a treatment for overactive bladder;
- Oracea (doxycycline), a treatment for inflammatory lesions of rosacea;
- Carbatrol (carbamazepine), an anti-epilepsy treatment;
- Equetro (carbamazepine), a treatment for bipolar disorder; and
- Adderall XR (mixed amphetamine salts), a stimulant ADHD treatment.

We do not expect the above products to contribute to our future cash. Carbatrol, Equetro and Adderall XR are legacy products that were developed by us when we were formerly Shire Laboratories. In addition, in April 2008, we monetized the revenues underlying the future royalty streams relating to Sanctura XR and Oracea by transferring certain of our royalty payment rights and other license rights for such products to TCD Royalty Sub LLC, our wholly-owned subsidiary, in exchange for $63 million. We primarily reinvested the proceeds from this transaction into our research and development activities.

Solutrol (matrix delivery platform)

Solutrol is a matrix delivery system that can deliver poorly soluble, highly soluble, and pH dependent compounds in a reproducible and complete manner. Solutrol has been incorporated into Intuniv (guanfacine), a nonstimulant ADHD treatment, which is currently licensed to and marketed by Shire plc. In April 2009, this license became fully paid up when we sold to Shire the right to receive royalties and milestone payments owed to us for $36.9 million, which we primarily reinvested into our research and development activities.

EnSoTrol (osmotic delivery system)

EnSoTrol is comprised of a solubility enabled core and other agents surrounded by a semi-permeable membrane with a laser-drilled hole. When EnSoTrol is introduced to the contents of the gastrointestinal tract, it will induce solubilization of the core contents via fluid intake across the membrane coating. The solubilized core contents are then released through the laser-drilled hole along the osmotic gradient, thus yielding a surface-area controlled constant release profile. EnSoTrol has been tested in several clinical trials, including a Phase III trial currently being conducted by United Therapeutics Corporation, or United Therapeutics for an oral formulation of treprostinil diethanolamine, or treprostinil.

In June 2006, we entered into a license agreement with United Therapeutics for the worldwide development and commercialization of an oral formulation of treprostinil, which utilizes EnSoTrol for the treatment of pulmonary arterial hypertension, or PAH, as well as for other indications. Under the terms of the license agreement, we have received pre-commercial milestone payments of $750,000. Remaining milestone payments to us could total up to $6.8 million, which includes pre-commercial milestone payments of up to approximately $2.8 million for the satisfaction of development milestones relating to the treatment of PAH and up to $4.0 million for the development of each additional product that combines a form of oral treprostinil that utilizes our technologies with another drug compound. If United Therapeutics receives approval to market and sell an oral formulation of treprostinil, we will be entitled to receive royalties based on worldwide net sales.

Other Technologies

We also have proprietary techniques for identifying lead molecules and optimizing their oral delivery consisting of ProScreen, ProPhile and OptiScreen technologies. ProScreen is a predictive screen for lead candidates that warrant oral delivery. ProPhile is a suite of in silico modeling tools that enables multivariate analysis and pharmacokinetic prediction. OptiScreen is a technology for formulation optimization including solubility or permeability enhancement leading to oral bioavailability improvement. We believe that this suite of technologies enables us to optimize the delivery and the development of existing chemical entities and marketed products.

Sales and Marketing

We are preparing the build-out of our commercial infrastructure to launch both SPN-538 and Epliga in the United States. Upon approval of SPN-538, we would hire a small specialty sales force, initially consisting of a limited number of field sales representatives to support the launch of the product. We would then seek to expand our sales force in connection with an approval and commercial launch of Epliga. Having two epilepsy products that can be promoted to the same physician audience would allow us to leverage our commercial infrastructure with these prescribers. Once we have obtained approval for any of our product candidates in our psychiatry portfolio, we anticipate adding additional sales force members who will be dedicated towards marketing our psychiatry products.

Manufacturing

We do not own or operate manufacturing facilities for the production of any of our product candidates, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We currently depend on third-party contract manufacturing organizations, or CMOs, for all of our required raw materials, active ingredients and finished product for our preclinical research and clinical trials. We do not have any current contractual relationships for the commercial manufacture of any of our product candidates. In parallel to seeking marketing approval for our product candidates, we intend to enter into agreements with third-party contract manufacturers for the commercial production of those products. We currently employ internal resources and as needed third-party consultants to manage our manufacturing contractors.

Manufacturing partnerships for our two most advanced product candidates, SPN-538 and Epliga, have been secured with leading CMOs headquartered in North America. These CMOs offer a comprehensive range of contract manufacturing and packaging services and have successfully handled the scale up of the two product candidates to a commercial production scale in preparation for the commercialization of both product candidates.

Competition

The biotechnology and pharmaceutical industries are highly competitive. A number of multinational pharmaceutical companies as well as large biotechnology companies are pursuing the development or are currently marketing pharmaceutical products in the anti-epilepsy and ADHD markets on which we are focusing.

Epilepsy

There are currently over 15 branded products, as well as their generic counterparts, on the U.S. market indicated to treat some form of epilepsy. Several NCEs are expected to enter the epilepsy market in the next few years. Based on prescription data from 1994 to 2005 for NCE launches for seizure disorders, such NCEs, on average, experienced slow market penetration characterized by a 0.58 to 1.1 market share point gain on an annual basis. We believe this is because physicians are often reluctant to change a stable patient's existing therapy and risk a breakthrough seizure in their patients.

If approved, SPN-538 (extended release topiramate) will compete with all immediate release topiramate products including Topamax and related generic products. We are aware that Upsher-Smith Laboratories announced the initiation of a Phase III clinical trial for an extended release topiramate product, which it has described as an internally developed program for the management of epilepsy in adults using its proprietary formulation technology. If this product candidate is approved by the FDA before SPN-538, then Upsher-Smith could obtain three years of marketing exclusivity, which would significantly delay our entry into the U.S. market. If approved, Epliga (extended release oxcarbazepine) will compete with all immediate release oxcarbazepine products including Trileptal and related generic products. We are not aware of any other company that is currently developing an extended release oxcarbazepine product in the United States. In addition, we believe that Epliga's once-daily formulation solves a drug delivery challenge specific to oxcarbazepine that must be overcome by all potential competitors. We are aware of companies who have modified-release oxcarbazepine products that are marketed outside of the United States but, to our knowledge, such products are not being pursued for the U.S. market. These modified-release oxcarbazepine products include Apydan, which is developed by Desitin Arzneimittel GmbH and requires twice-daily administration.

ADHD

Competition in the U.S. ADHD market has increased with the launch of several products in recent years, including the launch of generic versions of branded drugs, such as Adderall XR. Shire plc is one of the leaders in the U.S. ADHD market with three products: Adderall XR, an extended release stimulant treatment designed to provide once-daily dosing; Vyvanse, a stimulant prodrug product launched in 2007; and Intuniv, a non-stimulant treatment launched in November 2009. Other stimulant products for the treatment of ADHD in the U.S. market include the following once-daily formulations: Concerta; Metadate CD; Ritalin LA; Focalin XR; and Daytrana. Other non-stimulants are Strattera and Clonicel. We are also aware of clinical development efforts by several large pharmaceutical companies including Shire plc, GlaxoSmithKline plc, Eisai Inc., AstraZeneca plc and Abbott Laboratories to develop additional treatment options for ADHD.

Intellectual Property and Exclusivity

Overview

We have been building and continue to build our intellectual property portfolio relating to our product candidates, including SPN-538 and Epliga. We seek patent protection, where appropriate, in the United States and internationally for our product candidates. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad (including Europe, Canada and certain other countries when appropriate) relating to proprietary technologies that are important to the development of our business. We also rely on trade secrets, know-how, continuing technological innovation and in-licensing opportunities to develop and maintain our proprietary position. We cannot be sure that patents will be granted with respect to any of our pending patent applications or with respect to any patent applications filed by us in the future, nor can we be sure that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our technology.

Our success will depend significantly on our ability to obtain and maintain patent and other proprietary protection for the technologies and products we consider important to our business, defend our patents, preserve the confidentiality of our trade secrets and operate our business without infringing the patents and proprietary rights of third parties.

We have established and continue to build proprietary positions for Epliga, SPN-538, our pipeline product candidates and technologies in the United States and abroad.

Patent Portfolio

Our Epliga patent portfolio currently includes one issued U.S. Patent, two pending U.S. continuation patent applications, and certain pending foreign patent applications that relate to the issued U.S. patent or pending U.S. non-provisional patent applications. The issued U.S. patent will expire in 2027. We own the issued patent and all of the pending applications.

In addition to the patents and patent applications relating to Epliga, we currently have one pending U.S. non-provisional patent application, two pending U.S. continuation patent applications and certain pending foreign counterpart patent applications in Europe, Canada and other countries, which are directed to SPN-538. The U.S. patent application, if issued, could expire in 2027. We own all of these pending applications.

Our patent portfolio also contains patent applications relating to our other pipeline products. We have a pending U.S. non-provisional patent application and a pending international patent application relating to our SPN-810 product candidate. Patents, if issued, from the applications could have terms expiring in 2029. With regard to our SPN-812 product candidate we have a pending U.S. non-provisional patent application and a pending international patent application. The U.S. patent application, if issued as a patent, would expire in 2029.

The U.S. patent system permits the filing of provisional and non-provisional patent applications. A non-provisional patent application is examined by the U.S. Patent and Trademark Office, or USPTO, and can mature into a patent once the USPTO determines that the claimed invention meets the standards for patentability. A provisional patent application is not examined for patentability, and automatically expires 12 months after its filing date. As a result, a provisional patent application cannot mature into a patent. The requirements for filing a provisional patent application are not as strict as those for filing a non-provisional patent application. Provisional applications are often used, among other things, to establish an early filing date for a subsequent non-provisional patent application. The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the earliest date of filing a non-provisional patent application. In the United States, a patent's term may be lengthened by patent term adjustment, or PTA, which compensates a patentee for administrative delays by the USPTO in granting a patent. In view of a recent court decision, the USPTO is under greater scrutiny regarding its calculations where the USPTO erred in calculating the patent term adjustment for the patents in question denying the patentee a portion of the patent term to which it was entitled. Alternatively, a patent's term may be shortened if a patent is terminally disclaimed over another patent.

The filing date of a non-provisional patent application is used by the USPTO to determine what information is prior art when it considers the patentability of a claimed invention. If certain requirements are satisfied, a non-provisional patent application can claim the benefit of the filing date of an earlier filed provisional patent application. As a result, the filing date accorded by the provisional patent application may supersede information that otherwise could preclude the patentability of an invention.

The term of a patent that covers an FDA-approved drug may also be eligible for patent term extension, or PTE, which permits patent term restoration as compensation for the patent term lost during the FDA regulatory review process. The Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments, permits a PTE of up to five years beyond the expiration of the patent. The length of the PTE is related to the length of time the drug is under regulatory review. Patent extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only one patent applicable to an approved drug may be extended. Similar provisions are available in Europe and other foreign jurisdictions to extend the term of a patent that covers an approved drug. In the future, if and when our pharmaceutical products receive FDA or other regulatory approval, we may be able to apply for PTEs on patents covering those

products. Depending upon the timing, duration and specifics of FDA approval of Epliga, SPN-538 and our other product candidates, one or more of our U.S. patents may be eligible for limited patent term restoration.

Other Intellectual Property Rights

We seek trademark protection in the United States and internationally where available and when appropriate. We have filed for trademark protection for several marks, which we use in connection with our pharmaceutical research and development collaborations as well as products. We are the owner of various U.S. federal trademark registrations (®) and registration applications (TM), including the following marks referred to in this prospectus pursuant to applicable U.S. intellectual property laws: "Supernus®," "Epliga®," "Microtrol®," "Solutrol®," "ProScreen®," "OptiScreen®," "ProPhile®" and the registered Supernus Pharmaceuticals logo.

From time to time, we may find it necessary or prudent to obtain licenses from third party intellectual property holders. Where licenses are readily available at reasonable cost, such licenses are considered a normal cost of doing business. In other instances, however, we may use the results of freedom-to-operate inquiries and internal analyses to guide our early-stage research away from areas where we are likely to encounter obstacles in the form of third party intellectual property. For example, where a third party holds relevant intellectual property and is a direct competitor, a license might not be available on commercially reasonable terms or available at all. We strive to identify potential third party intellectual property issues in the early stages of research of our research programs, in order to minimize the cost and disruption of resolving such issues.

To protect our competitive position, it may be necessary to enforce our patent rights through litigation against infringing third parties. Litigation to enforce our own patent rights is subject to uncertainties that cannot be quantified in advance. In the case of an adverse outcome in litigation, we could be prevented from commercializing a product or using certain aspects of our technology platforms as a result of patent infringement claims asserted against us. This could have a material adverse effect on our business. In addition, litigation involving our patents carries the risk that one or more of our patents will be held invalid (in whole or in part, on a claim-by-claim basis) or held unenforceable. Such an adverse court ruling could allow third parties to commercialize products or use technologies that are similar to ours, and then compete directly with us, without payment to us. See "Risk Factors—If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business."

In-Licensing Arrangements

Afecta Pharmaceuticals, Inc.

We have entered into two license agreements with Afecta Pharmaceuticals, Inc., or Afecta, pursuant to which we obtained an exclusive option to evaluate Afecta's CNS pipeline and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810. Under the terms of the license agreements, we have paid Afecta $400,000 in license fees and milestone payments. If a product candidate is successfully developed and commercialized, we will be obligated to pay royalties to Afecta based on net sales worldwide in the low-single digits. Unless terminated by us or Afecta for material breach or bankruptcy, by Afecta for our discontinuation of development and commercialization activities, or by us for convenience, the license agreements will continue in full force and effect on a country-by-country basis until six months from the discontinuation of the commercial sale and collection of revenues for the Afecta product.

Rune Healthcare Limited

In June 2006, we entered into a purchase and sale agreement with Rune Healthcare Limited, or Rune, where we obtained the exclusive worldwide rights to a product concept from Rune for SPN-809. Under the terms of the agreement, we have paid Rune a £25,000 up-front fee. If we receive approval to market and sell any products based on the Rune product concept, we will be obligated to pay royalties to Rune based on net sales worldwide in the low-single digits. Unless terminated by us or Rune for material breach, by Rune for our discontinuation of development or commercialization activities relating to a product based on the Rune product concept, we will be obligated to pay royalties to Rune on a country-by-country basis until the earlier of (a) ten years from the date of first commercial sale of a product based on the Rune product concept or (b) the market entry in such country of any product utilizing the Rune product by any entity other than us, our affiliates or our licensees.

Confidential Information and Inventions Assignment Agreements

We require our employees, temporary employees, consultants to execute confidentiality agreements upon the commencement of employment, consulting or collaborative relationships with us. These agreements provide that all confidential information developed or made known during the course of the relationship with us be kept confidential and not disclosed to third parties except in specific circumstances. The agreements provide that all inventions resulting from work performed for us or relating to our business and conceived or completed by the individual during employment or assignment, as applicable, shall be our exclusive property to the extent permitted by applicable law.

We seek to protect our product candidates and our technologies through a combination of patents, trade secrets, proprietary know-how, FDA exclusivity and contractual restrictions on disclosure.

Government Regulation

Product Approval

Government authorities in the United States at the federal, state and local level, and other countries, extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, marketing, export and import of products such as those we are developing. Our product candidates, including SPN-538 and Epliga, must be approved by the FDA before they may legally be marketed in the United States.

U.S. Drug Development Process

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or FDCA, and implementing regulations. The process of obtaining regulatory approvals and ensuring compliance with appropriate federal, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process, or after approval, may subject an applicant to administrative or judicial sanctions. These sanctions could include the FDA's refusal to approve pending applications, withdrawal of an approval, a clinical hold, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties. The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests, animal studies and formulation studies according to Good Laboratory Practices regulations;

- submission to the FDA of an IND, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials according to Good Clinical Practices, or GCP, to establish the safety and efficacy of the proposed drug for its intended use;
- submission to the FDA of an NDA for a new drug;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current Good Manufacturing Practices, or cGMP; and
- FDA review and approval of the NDA.

The testing and approval process require substantial time, effort and financial resources and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all.

Once a pharmaceutical product candidate is identified for development, it enters the preclinical testing stage. Preclinical tests include laboratory evaluations of product chemistry, toxicity, formulation and stability, as well as animal studies. An IND sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data and any available clinical data or literature, to the FDA as part of the IND. The sponsor must also include a protocol detailing, among other things, the objectives of the initial clinical trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated if the initial clinical trial lends itself to an efficacy evaluation. Some preclinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA places the clinical trial on a clinical hold within that 30-day time period. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Clinical holds also may be imposed by the FDA at any time before or during trials due to safety concerns or non-compliance.

All clinical trials must be conducted under the supervision of one or more qualified investigators in accordance with GCP regulations. These regulations include the requirement that all research subjects provide informed consent. Further, an institutional review board, or IRB, must review and approve the plan for any clinical trial before it commences at any institution. An IRB considers, among other things, whether the risks to individuals participating in the trials are minimized and are reasonable in relation to anticipated benefits. The IRB also approves the information regarding the clinical trial and the consent form that must be provided to each clinical trial subject or his or her legal representative and must monitor the clinical trial until completed.

Once an IND is in effect, each new clinical protocol and any amendments to the protocol must be submitted to the IND for FDA review, and to the IRBs for approval. Protocols detail, among other things, the objectives of the clinical trial, dosing procedures, subject selection and exclusion criteria, and the parameters to be used to monitor subject safety.

Human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- *Phase I.* The product is initially introduced into healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. In the case of some products for severe or life-threatening diseases, especially when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing may be conducted in patients.

- *Phase II.* Phase II trials involve investigations in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage and schedule.

- *Phase III.* Clinical trials are undertaken to further evaluate dosage, clinical efficacy and safety in an expanded patient population at geographically dispersed clinical trial sites. These trials are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for regulatory approval and product labeling.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and safety reports must be submitted to the FDA and the investigators for serious and unexpected side effects. Phase I, Phase II and Phase III testing may not be completed successfully within any specified period, if at all. The FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects or patients are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients.

Concurrent with clinical trials, companies usually complete additional animal studies and must also develop additional information about the chemistry and physical characteristics of the product and finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality and purity of the final product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the product candidate does not undergo unacceptable deterioration over its shelf life.

U.S. Review and Approval Processes

The results of product development, preclinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests conducted on the drug, proposed labeling and other relevant information, are submitted to the FDA as part of an NDA for a new drug, requesting approval to market the product.

As an alternate path to FDA approval, particularly for modifications to drug products previously approved by the FDA, an applicant may submit an NDA under Section 505(b)(2) of the FDCA. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments, and permits the submission of an NDA where at least some of the information required for approval comes from clinical trials not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA requires submission of information needed to support any changes to a previously approved drug, such as published data or new studies conducted by the applicant, including bioavailability or bioequivalence studies, or clinical trials demonstrating safety and effectiveness. The FDA may then approve the new product candidate for all or some of the label indications for which the referenced product has been approved, as well as for any new indication sought by the Section 505(b)(2) applicant.

The submission of an NDA is subject to the payment of a substantial user fee; a waiver of such fee may be obtained under certain limited circumstances. For example, the agency will waive the application fee for the first human drug application that a small business or its affiliate submits for review.

In addition, under the Pediatric Research Equity Act of 2003, or PREA, which was reauthorized under the Food and Drug Administration Amendments Act of 2007, an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any drug for an indication for which orphan designation has been granted.

Section 505(b)(2) New Drug Applications. To the extent that a Section 505(b)(2) NDA relies on clinical trials conducted for a previously approved drug product or the FDA's prior findings of safety and effectiveness for a previously approved drug product, the Section 505(b)(2) applicant must submit patent certifications in its 505(b)(2) application with respect to any patents for the approved product on which the application relies that are listed in the FDA's publication, Approved Drug Products with Therapeutic Equivalence Evaluations, commonly referred to as the Orange Book. Specifically, the applicant must certify for each listed patent that (1) the required patent information has not been filed; (2) the listed patent has expired; (3) the listed patent has not expired, but will expire on a particular date and approval is not sought until after patent expiration; or (4) the listed patent is invalid, unenforceable or will not be infringed by the proposed new product. A certification that the new product will not infringe the previously approved product's listed patent or that such patent is invalid or unenforceable is known as a Paragraph IV certification. If the applicant does not challenge one or more listed patents through a Paragraph IV certification, the FDA will not approve the Section 505(b)(2) NDA application until all the listed patents claiming the referenced product have expired. Further, the FDA will also not approve, as applicable, a Section 505(b)(2) NDA application until any non-patent exclusivity, such as, for example, five-year exclusivity for obtaining approval of a new chemical entity, three year exclusivity for an approval based on new clinical trials, or pediatric exclusivity, listed in the Orange Book for the referenced product, has expired.

If the Section 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the owner of the referenced NDA for the previously approved product and relevant patent holders within 20 days after the Section 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement suit against the Section 505(b)(2) applicant. Under the FDCA, the filing of a patent infringement lawsuit within 45 days of receipt of the notification regarding a Paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA for 30 months beginning on the date the patent holder receives notice, or until a court deems the patent unenforceable, invalid or not infringed, whichever is earlier. Moreover, in cases where a Section 505(b)(2) application containing a Paragraph IV certification is submitted after the fourth year of a previously approved drug's five year exclusivity period and the patent holder brings suit within 45 days of notice of certification, the 30-month period is automatically extended to prevent approval of the Section 505(b)(2) application until the date that is seven and one-half years after approval of the previously approved reference product. The court also has the ability to shorten or lengthen either the 30 month or the seven and one-half year period if either party is found not to be reasonably cooperating in expediting the litigation. Thus, the Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its product only to be subject to significant delay and patent litigation before its product may be commercialized. Alternatively, if the NDA applicant or relevant patent holder does not file a patent infringement lawsuit within the specified 45 day period, the FDA may approve the Section 505(b)(2) application at any time.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, some pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), or if the

FDA's interpretation is successfully challenged in court, this could delay or even prevent the FDA from approving any Section 505(b)(2) NDA that we submit.

In the NDA submissions for our product candidates, we intend to follow the development and approval pathway permitted under the FDCA that we believe will maximize the commercial opportunities for these product candidates.

FDA Review of New Drug Applications. The FDA reviews all NDAs submitted to ensure that they are sufficiently complete for substantive review before it accepts them for filing. The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be re-submitted with the additional information. The re-submitted application also is subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews an NDA to determine, among other things, whether a product is safe and effective for its intended use and whether its manufacturing is cGMP-compliant to assure and preserve the product's identity, strength, quality and purity. Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. The FDA may refer the NDA to an advisory committee for review, evaluation and recommendation as to whether the application should be approved and under what conditions. An advisory committee is a panel of independent experts who provide advice and recommendations when requested by the FDA on matters of importance that come before the agency. The FDA is not bound by the recommendation of an advisory committee.

The approval process is lengthy and difficult and the FDA may refuse to approve an NDA if the applicable regulatory criteria are not satisfied or may require additional clinical data or other data and information. Even if such data and information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data obtained from clinical trials are not always conclusive and the FDA may interpret data differently than we interpret the same data. The FDA will issue a complete response letter if the agency decides not to approve the NDA in its present form. The complete response letter usually describes all of the specific deficiencies that the FDA identified in the NDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical trials. Additionally, the complete response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a complete response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, withdraw the application, or request an opportunity for a hearing.

If a product receives regulatory approval, the approval may be significantly limited to specific diseases and dosages or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. In addition, the FDA may require Phase 4 testing which involves clinical trials designed to further assess a drug's safety and effectiveness after NDA approval and may require testing and surveillance programs to monitor the safety of approved products that have been commercialized.

Patent Term Restoration and Marketing Exclusivity

Depending upon the timing, duration and specifics of FDA marketing approval of our product candidates, some of our U.S. patents may be eligible for limited patent term extension under the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond

a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND and the submission date of an NDA plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent and within sixty days of approval of the drug. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. In the future, we intend to apply for restorations of patent term for some of our currently owned or licensed patents to add patent life beyond their current expiration dates, depending on the expected length of the clinical trials and other factors involved in the filing of the relevant NDA.

Market exclusivity provisions under the FDCA can also delay the submission or the approval of certain applications. The FDCA provides a five-year period of non-patent marketing exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA submitted by another company for another version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, an application may be submitted after four years if it contains a Paragraph IV certification. The FDCA also provides three years of marketing exclusivity for an NDA, Section 505(b)(2) NDA or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application. Such clinical trials may, for example, support new indications, dosages or strengths of an existing drug. This three-year exclusivity covers only the conditions of use associated with the new clinical investigations and does not prohibit the FDA from approving ANDAs for drugs containing the original active agent. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA. However, an applicant submitting a full NDA would be required to conduct its own preclinical studies and clinical trials or obtain a right of reference to such studies or trials.

Pediatric exclusivity is another type of exclusivity in the United States. Pediatric exclusivity, if granted, provides an additional six months of exclusivity to be attached to any existing exclusivity (e.g., three or five year exclusivity) or patent protection for a drug. This six month exclusivity, which runs from the end of other exclusivity protection or patent delay, may be granted based on the voluntary completion of a pediatric trial in accordance with an FDA-issued "Written Request" for such a trial. The current pediatric exclusivity provision was reauthorized in September 2007.

Post-Approval Requirements

Any drugs for which we receive FDA approval are subject to continuing regulation by the FDA, including, among other things, record-keeping requirements, reporting of adverse experiences with the product, providing the FDA with updated safety and efficacy information, product sampling and distribution requirements, complying with certain electronic records and signature requirements and complying with FDA promotion and advertising requirements. The FDA strictly regulates labeling, advertising, promotion and other types of information on products that are placed on the market. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label. Further, manufacturers of drugs must continue to comply with cGMP requirements, which are extensive and require considerable time, resources and ongoing investment to ensure compliance. In addition, changes to the manufacturing process generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

Drug manufacturers and other entities involved in the manufacturing and distribution of approved drugs are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. The cGMP requirements apply to all stages of the manufacturing process, including the production, processing, sterilization, packaging, labeling, storage and shipment of the drug. Manufacturers must establish validated systems to ensure that products meet specifications and regulatory standards, and test each product batch or lot prior to its release. We rely, and expect to continue to rely, on third parties for the production of clinical quantities of our product candidates. Future FDA and state inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution or may require substantial resources to correct.

The FDA may withdraw a product approval if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. Further, the failure to maintain compliance with regulatory requirements may result in administrative or judicial actions, such as fines, warning letters, holds on clinical trials, product recalls or seizures, product detention or refusal to permit the import or export of products, refusal to approve pending applications or supplements, restrictions on marketing or manufacturing, injunctions or civil or criminal penalties.

From time to time, legislation is drafted, introduced and passed in Congress that could significantly change the statutory provisions governing the approval, manufacturing and marketing of products regulated by the FDA. In addition to new legislation, the FDA regulations and policies are often revised or reinterpreted by the agency in ways that may significantly affect our business and our product candidates. It is impossible to predict whether further legislative or FDA regulation or policy changes will be enacted or implemented and what the impact of such changes, if any, may be.

Foreign Regulation

In addition to regulations in the United States, we will be subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of our product candidates to the extent we choose to clinically evaluate or sell any products outside of the United States. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country. As in the United States, post-approval regulatory requirements, such as those regarding product manufacture, marketing, or distribution would apply to any product that is approved outside the Untied States.

Third Party Payor Coverage and Reimbursement

In both the United States and foreign markets, our ability to commercialize our product candidates successfully, and to attract commercialization partners for our product candidates, depends in significant part on the availability of adequate financial coverage and reimbursement from third party payors, including, in the United States, governmental payors such as the Medicare and Medicaid programs, managed care organizations, and private health insurers. Medicare is a federally funded program managed by the Centers for Medicare and Medicaid Services, or CMS, through local fiscal intermediaries and carriers that administer coverage and reimbursement for certain healthcare items and services furnished to the elderly and disabled. Medicaid is an insurance program for certain categories of patients whose income and assets fall below state defined levels and who are otherwise uninsured that is both federally and state funded and managed by each state. The federal government

sets general guidelines for Medicaid and each state creates specific regulations that govern its individual program. Each payor has its own process and standards for determining whether it will cover and reimburse a procedure or particular product. Private payors often rely on the lead of the governmental payors in rendering coverage and reimbursement determinations. Therefore, achieving favorable CMS coverage and reimbursement is usually a significant gating issue for successful introduction of a new product. The competitive position of some of our products will depend, in part, upon the extent of coverage and adequate reimbursement for such products and for the procedures in which such products are used. Prices at which we or our customers seek reimbursement for our product candidates can be subject to challenge, reduction or denial by the government and other payors.

The United States Congress and state legislatures may, from time to time, propose and adopt initiatives aimed at cost containment, which could impact our ability to sell our product candidates profitably. For example, in March 2010, President Obama signed into law the Patient Protection and Affordable Care Act and the associated reconciliation bill, which we refer to collectively as the Health Care Reform Law, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. Effective October 1, 2010, the Health Care Reform Law revises the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states once the provision is effective. Further, beginning in 2011, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. Substantial new provisions affecting compliance have also been enacted, which may require us to modify our business practices with healthcare practitioners. We will not know the full effects of the Health Care Reform Law until applicable federal and state agencies issue regulations or guidance under the new law. Although it is too early to determine the effect of the Health Care Reform Law, the new law appears likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs. Moreover, in the coming years, additional changes could be made to governmental healthcare programs that could significantly impact the success of our product candidates.

The cost of pharmaceuticals continues to generate substantial governmental and third party payor interest. We expect that the pharmaceutical industry will experience pricing pressures due to the trend toward managed healthcare, the increasing influence of managed care organizations and additional legislative proposals. Our results of operations could be adversely affected by current and future healthcare reforms.

Some third party payors also require pre-approval of coverage for new or innovative devices or drug therapies before they will reimburse healthcare providers that use such therapies. While we cannot predict whether any proposed cost-containment measures will be adopted or otherwise implemented in the future, the announcement or adoption of these proposals could have a material adverse effect on our ability to obtain adequate prices for our product candidates and operate profitably.

Legal Proceedings

From time to time and in the ordinary course of business, we are subject to various claims, charges and litigation. For example, we may be required to file infringement claims against third parties for the infringement of our patents. For additional information regarding the patent litigation matters in which we are involved, please see "Risk Factors—We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful." Although the outcome of litigation cannot be predicted with certainty and some lawsuits, claims or proceedings may be disposed of unfavorably to us, we do not believe the outcome of any such litigation, individually or in the aggregate, will have a material adverse effect on our financial condition, results of operations or cash flows.

Employees

As of September 30, 2010, we employed 69 full-time employees, of which 59 were engaged in research and development, clinical trials and quality assurance and 10 were engaged in administration, finance, marketing and business development. None of our employees are represented by a labor union.

Facilities

Our principal executive offices are located at 1550 East Gude Drive, Rockville, Maryland 20850, where we occupy approximately 44,500 square feet of laboratory and office space. Our lease term expires in April 30, 2018 with an option for a five year extension. We believe that our existing facilities are sufficient for our present and future operations, and we currently have no plans to lease additional space.

MANAGEMENT

Executive Officers, Directors And Key Employees

The following table sets forth the names and ages of our executive officers, directors and key employees as of September 30, 2010.

Name	Age	Position(s)
Jack A. Khattar	49	President & Chief Executive Officer, Director
Russell P. Wilson	50	Vice President, Chief Financial Officer
Jones W. Bryan, Ph.D.	46	Vice President of Business Development
Padmanabh P. Bhatt, Ph.D.	53	Vice President of Pharmaceutical Sciences
Paolo Baroldi, M.D., Ph.D.	59	Senior Vice President of Clinical Development & Chief Medical Officer
Tami T. Martin, R.N., Esq.	55	Vice President of Regulatory Affairs
M. James Barrett, Ph.D.	67	Director
Michael Bigham	53	Director
Frederick M. Hudson	65	Director
Charles W. Newhall, III	65	Director
William A. Nuerge	58	Director
Michael B. Sheffery, Ph.D.	59	Director

Jack A. Khattar is the founder of our company and has served as our President and Chief Executive Officer and Director since 2005. From 1999 to 2005, Mr. Khattar served in various positions during that time as a Board member, President and CEO of Shire Laboratories Inc., the drug delivery subsidiary of Shire plc. From 1999 to 2004, he also served as a member of Shire plc's Executive Committee. Prior to that, Mr. Khattar served as an Executive Officer and the Chairman of the Management Committee at CIMA, a drug delivery company that is currently a division of Cephalon. At CIMA, he was also responsible for business development, including the licensing of CIMA's technologies, corporate alliances and strategic planning. Prior to joining CIMA in 1995, Mr. Khattar held several marketing and business development positions at Merck & Co., Novartis, Playtex and Kodak in various locations, including the United States, Europe and the Middle East. Mr. Khattar earned his degrees in Marketing with a BBA from American University of Beirut and an MBA from the Wharton School of the University of Pennsylvania. He is currently a director of Rockville Economic Development Inc. Mr. Khattar's leadership, executive, managerial, business and pharmaceutical company experience, along with his more than 20 years of industry experience in the development and commercialization of pharmaceutical products and drug delivery technologies, qualify him to be a director.

Russell P. Wilson has served as our Vice President, Chief Financial Officer since 2009. From 2000 to 2008, Mr. Wilson served at Iomai Corporation, which was sold to Intercell AG in August 2008, in various positions. While at Iomai Corporation, Mr. Wilson was responsible at different times for finance, legal, business development, regulatory affairs and quality systems, and served as Senior Vice President (from May 2005 to 2008), Chief Financial Officer (from June 2002 to 2008), General Counsel (from March 2000 to 2008) and Secretary (from May 2000 to 2008), and Vice President, Business Development (from March 2000 to June 2002). Mr. Wilson earned his B.A. from Princeton University and holds a joint M.B.A./ J.D. degree from the University of Virginia.

Jones W. Bryan, Ph.D., has served as our Vice President of Business Development since 2005. From 2000 to 2005, he served as Vice President Business Development for Shire Laboratories Inc. Prior to that, Dr. Bryan was Director of Business Development for Pharmaceutics and Clinical Supply Manufacturing for AAI. He began his career with Schering Plough in Pharmaceutics and Formulation Development. Dr. Bryan earned his B.S. degree in Zoology from Clemson University, Ph.D. degree in

Pharmaceutics from the Medical University of South Carolina and Executive Management Certificate from the University of North Carolina Kenan-Flagler Business School. He is a member of the Licensing Executives Society and serves on Clemson University's Spiro Institute Entrepreneurship Advisory Board.

Padmanabh P. Bhatt, Ph.D., has served as our Vice President of Pharmaceutical Sciences since 2005. From 2003 to 2005, Dr. Bhatt was Vice President of Advanced Drug Delivery at Shire Laboratories Inc. From 2001 to 2003, Dr. Bhatt served as Vice President of Research and Development and Chief Technology Officer at Point Biomedical Corporation. From 1996 to 2001, he served at ALZA Corporation (now a Johnson & Johnson company) in various positions from Product Development Manager to Director of Technical Development. Prior to that time, Dr. Bhatt has held positions as Research Specialist and Group Leader of Novel Drug Delivery at Dow Corning Corporation (from 1992 to 1996) and Senior Scientist at Hercon Laboratories (from 1989 to 1992). Dr. Bhatt earned his B.Pharm. and M.Pharm. degrees from the University of Bombay, India. He also holds M.S. and Ph.D. degrees in Pharmaceutical Chemistry from the University of Kansas.

Paolo Baroldi, M.D., Ph.D., has served as our Senior Vice President of Clinical Development & Chief Medical Officer since 2009. From 2006 to 2009, he served as a Senior Vice President and Chief Medical Officer at Vanda. From 2003 to 2006, Dr. Baroldi served as Vice President-Corporate Drug Development and Chairman of the R&D Board at Chiesi Farmaceutici SpA, where he led a research and development organization of 350 people across 3 sites in the United States, Italy and France. From 1998 to 2002, Dr. Baroldi was the Global Head of Clinical Pharmacology at Novartis AG, responsible for a staff of 140 people across five different sites, including France, the United Kingdom, Japan and the United States. Dr. Baroldi holds degrees in Medicine and Surgery and a Ph.D. in Clinical Pharmacology from the University of Milan and an Executive MBA from Harvard University.

Tami T. Martin, R.N., Esq., has served as our Vice President of Regulatory Affairs since 2008. She has previously held positions as Vice President of Regulatory Affairs at Shire Pharmaceuticals (6 years), and Manager to Sr. Director of Regulatory Affairs at Otsuka America Pharmaceuticals (7 years). Ms. Martin has also consulted privately for domestic and international clients as President and CEO of Pyramid Regulatory Consulting. Earlier in her career, Ms. Martin held legal positions at Hogan & Hartson as a member of the Food and Drug Practice Group, and with the Department of Health and Human Services as a staff attorney. Ms. Martin previously served as an instructor for the Johns Hopkins University Masters of Biotechnology and Regulatory Affairs Graduate Degree program, and teaches a portion of the United States Regulatory Module for TOPRA (The Organization for Professionals in Regulatory Affairs) leading to a MSc in Regulatory Affairs through the University of Wales. Ms. Martin earned her Bachelor of Science in Nursing from Albright College and a Juris Doctorate degree from Suffolk University. Ms. Martin is a member of the Pennsylvania Bar.

M. James Barrett, Ph.D., has served as a member of our Board since 2005. Since September 2001, Dr. Barrett has been a general partner of New Enterprise Associates, or NEA, which is a venture capital firm that focuses on the medical and life sciences and information technology industries. He is currently a member of the board of directors of each of the publicly-traded companies Amicus Therapeutics, Inc., Inhibitex, Inc. and Targacept, Inc., within the past five years, he served on the board of directors of each of the publicly-traded companies Iomai Corporation (acquired by Intercell AG), MedImmune, LLC (acquired by AstraZeneca), Pharmion Corporation (acquired by Celgene Corporation) and YM Biosciences, Inc. As a result of Dr. Barrett's tenure as a general partner of New Enterprise Associates, he has served on numerous boards of directors of both public and private companies in the healthcare sector and brings to the Board significant first-hand experience in shaping strategic direction as a pharmaceutical company matures from a private venture-backed company to a development-stage public company and then to a product revenue-generating company. Dr. Barrett's substantial experience with public and private companies in the healthcare sector and his venture capital, financial and business experience qualify him to serve as a director.

Michael Bigham has served as a member of our Board since 2006. Since 2002, Mr. Bigham has been a general partner of Abingworth Management, a leading international venture capital firm concentrating in life sciences. From December 2002 to March 2004, he served as Vice Chairman of Corixa Corporation, and was President and Chief Executive of Coulter Pharmaceuticals from July 1996 until it merged into Corixa in December 2000. Previously, he was an early employee at Gilead Sciences where he spent eight years serving in various capacities, including Executive Vice President of Operations and Chief Financial Officer. Before joining Gilead, Mr. Bigham was a partner at Hambrecht & Quist where he became Co-Head of Healthcare Investment Banking. Mr. Bigham earned his B.S. Degree with distinction from the University of Virginia and holds an MBA from Stanford University Graduate School of Business. Mr. Bigham is also a Certified Public Accountant. Mr. Bigham's significant operational and investment banking experience in life science companies qualify him to serve as a director.

Frederick M. Hudson has served as a member of our Board since 2010. Mr. Hudson retired as a partner in charge of the health care audit practice for the Washington—Baltimore business unit of the accounting firm of KPMG, LLP on January 1, 2006 after a 37-year career with the firm. He is a graduate of Loyola University Maryland and currently serves in a board capacity with the Board of Financial Administration of the Catholic Archdiocese of Baltimore and the Board of Trustees of the Maryland Historical Society. He chairs the audit committees of each of the boards of directors of Paradigm Management Services LLC (a provider of catastrophic care services), Woodhaven Holding Corporation, d/b/a Remedi Senior Care (an institutional pharmacy service provider), GBMC Healthcare, Inc. and its affiliate, the Greater Baltimore Medical Center, and Vicor Technologies, Inc. He is also a director of Maxim Health Care Services, Inc. Mr. Hudson's extensive accounting and health care audit experience qualify him to serve as a director.

Charles W. Newhall, III has served as a member of our Board since 2005. In 1977, Mr. Newhall co-founded NEA, a venture capital firm that focuses on the medical and life sciences and information technology industries. To date, Mr. Newhall has served as a director of over 40 venture-backed companies. He also started several healthcare information technology companies like PatientKeeper, TargetRx and LifeMetrix. Some of his current board memberships include Vitae Pharmaceuticals, TargetRx, Sensors for Medicine and Science, and BrainCells Inc. In 1986, he founded the Mid-Atlantic Venture Capital Association, or MAVA, which now has over 80 venture capital firms that are members, and is one of the most active regional venture associations in the country. He is Chairman Emeritus of MAVA. Before NEA, Mr. Newhall was a Vice President of T. Rowe Price. He served in Vietnam commanding an independent platoon including an initial reconnaissance of Hamburger Hill. His decorations include the Silver Star and Bronze Star V (1st OLC). He earned an Honors Degree in English from the University of Pennsylvania and an MBA from Harvard Business School. Mr. Newhall's substantial experience with companies in the healthcare sector and his venture capital, financial and business experience qualify him to serve as a director.

William A. Nuerge has served as a member of our Board since 2006. Since 2007, Mr. Nuerge has been a managing partner of Fortress Pharms Advisors, LLC. From 2004 to 2007, Mr. Nuerge served as a director and President and CEO of Xanodyne Pharmaceuticals. From 1997 to 2004, he served as President and CEO of Shire US, Inc. Prior to that, Mr. Nuerge served as Chief Operating Officer of Richwood Pharmaceuticals Company, Inc., which subsequently merged with Shire plc in 1997. Mr. Nuerge earned his Bachelor of Science degree from Purdue University and his MBA from Wesleyan University. He has also previously served as a director of Cutanogen Corporation. Mr. Nuerge's significant operational and business experience with life science companies qualify him to serve as a director.

Michael B. Sheffery, Ph.D., has served as a member of our Board since 2005. Dr. Sheffery is a founding General Partner of OrbiMed Advisors, LLC, a healthcare investment firm, and Co-Head of Private Equity at Orbimed. Dr. Sheffery was formerly Head of the Laboratory of Gene Structure and

Expression at Memorial Sloan-Kettering Cancer Center. Dr. Sheffery joined Mehta and Isaly, an investment firm, in 1996 as a Senior Analyst covering the biotechnology industry. He earned both his Ph.D. in Molecular Biology and his B.A. in Biology from Princeton University. He is currently a Director of Affimed Therapeutics AG and Pieris AG. Dr. Sheffery's background and expertise in private equity and investment banking, combined with his scientific experience, qualify him to serve as a director.

Composition of Our Board of Directors

Our board of directors currently consists of seven members. All of our directors were elected pursuant to the board composition provisions of our stockholders voting agreement. Our nominating and corporate governance committee and board of directors may consider a broad range of factors relating to the qualifications and background of nominees, which may include diversity, which is not limited to race, gender or national origin. We have no formal policy regarding board diversity. Our nominating and corporate governance committee's and board of directors' priority in selecting board members is identification of persons who will further the interests of our stockholders through their established records of professional accomplishment, the ability to contribute positively to the collaborative culture among board members, and professional and personal experiences and expertise relevant to our growth strategy.

Director Independence

We intend to apply to have our common stock listed on the Nasdaq Global Market. Under Rules 5605 and 5615 of the Nasdaq Marketplace Rules, a majority of a listed company's board of directors must be comprised of independent directors within one year of listing. In addition, the Nasdaq Marketplace Rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and corporate governance committees be independent and that audit committee members also satisfy independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. Under Rule 5605(a)(2) of the Nasdaq Marketplace Rules, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Upon the completion of this offering, we expect that the composition and functioning of our board of directors and each of our board committees will comply with all applicable rules and regulations of the Securities and Exchange Commission, or the SEC, and the Nasdaq Global Market. There are no family relationships among any of our directors or executive officers.

Committees Of Our Board Of Directors

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

Compensation Committee

The current members of our compensation committee are , who is the chair of the committee, and . We expect that upon completion of this offering, each of the members of our compensation committee will be independent under the applicable rules and regulations of the SEC, the Nasdaq Global Market and the Internal Revenue Service. Our compensation committee reviews and recommends policies relating to compensation and benefits of our officers and employees. The compensation committee's responsibilities will include:

- reviewing and approving corporate goals and objectives relevant to the compensation of our chief executive officer and other executive officers;

- evaluating the performance of these officers in light of those goals and objectives;
- setting the compensation of these officers based on such evaluations;
- reviewing and approving the terms of any employment agreements with our chief executive officer and other executive officers;
- administering the issuance of stock options and other awards under our stock plans; and
- reviewing and evaluating, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter.

Audit Committee

The current members of our audit committee are , who is the chair of the committee and . We expect that upon completion of this offering, all members of our audit committee will meet the requirements for financial literacy under the applicable rules and regulations of the SEC and the Nasdaq Global Market. Our board has determined that is an audit committee financial expert as defined under the applicable rules of the SEC and has the requisite financial sophistication as defined under the applicable rules and regulations of the Nasdaq Global Market. , and are independent directors as defined under the applicable rules and regulations of the SEC and the Nasdaq Global Market. The audit committee will operate under a written charter that satisfies the applicable standards of the SEC and the Nasdaq Global Market. Our audit committee's responsibilities will include:

- overseeing our corporate accounting and financial reporting process;
- evaluating the independent auditors' qualifications, independence and performance;
- determining the engagement of the independent auditors;
- reviewing and approving the scope of the annual audit and the audit fee;
- discussing with management and the independent auditors the results of the annual audit and the review of our quarterly financial statements;
- approving the retention of the independent auditors to perform any proposed permissible non-audit services;
- monitoring the rotation of partners of the independent auditors on our engagement team as required by law;
- reviewing our critical accounting policies and estimates;
- overseeing our internal audit function; and
- annually reviewing the audit committee charter and the audit committee's performance.

Governance Committee

The current members of our governance committee are , who is the chair of the committee, and . We expect that upon completion of this offering, each of the members of our governance committee will be independent under the applicable rules and regulations of the SEC and the Nasdaq Global Market. The governance committee's responsibilities will include:

- making recommendations to our board of directors regarding candidates for directorships and the size and composition of our board;
- overseeing our corporate governance guidelines; and
- reporting and making recommendations to our board concerning governance matters.

Other Committees

Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has at any time been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including those officers responsible for financial reporting.

Executive Compensation

Compensation Discussion and Analysis

Introduction. *This section discusses our executive compensation policies and arrangements as they relate to our named executive officers who are listed in the compensation tables set forth below. The following discussion should be read together with the compensation tables and related disclosure set forth below.*

Our named executive officers, or NEOs, for the year ended December 31, 2009 are listed in the table below.

Name	Title
Jack A. Khattar	Chief Executive Officer, President
Russell P. Wilson	Vice President, Chief Financial Officer
Paolo Baroldi, M.D, Ph.D.	Senior Vice President, Chief Medical Officer
Padmanabh Bhatt, Ph.D.	Vice President, Pharmaceutical Sciences
Jones W. Bryan, Ph.D.	Vice President, Business Development

With respect to these NEOs, our board of directors determined initial compensation for these persons based primarily on negotiations between our board and our NEOs prior to their being hired and our board's past practices and experiences with companies such as ours.

We expect that following the completion of this offering, our Compensation Committee will undertake a substantial review of our existing compensation programs, objectives and philosophy and determine whether such programs, objectives, and philosophy are appropriate after we have become a public company. In addition, as we gain experience as a public company, we expect that the specific direction, emphasis and components of our executive compensation program will continue to evolve.

Executive Compensation Objectives and Philosophy

The key objectives of our executive compensation programs are (1) to attract, motivate, reward and retain superior executive officers with the skills necessary to successfully lead and manage our business; (2) to achieve accountability for performance by linking annual cash incentive compensation to the achievement of measurable performance objectives; and (3) to align the interests of our executive officers and our equity holders through short- and long-term incentive compensation programs. For our NEOs, these short- and long-term compensation are designed to accomplish these objectives by providing a significant correlation between our results of operations and total compensation.

We expect to provide our NEOs with a significant portion of their compensation through cash incentive compensation contingent upon the achievement of operational and personal performance metrics, as well as through equity compensation. These two elements of executive compensation are aligned with the interests of our stockholders because the amount of compensation ultimately received will vary with our company's financial and operational performance. Equity compensation derives its value from our equity value, which in the future is likely to fluctuate based on our financial and operational performance.

We seek to apply a consistent philosophy to compensation for all executive officers. Our compensation philosophy is based on the following core principles.

To Pay for Performance

Individuals in leadership roles are compensated based on a combination of total company and individual performance factors. Total company performance is evaluated primarily on the degree to which pre-established operational objectives are met. Individual performance is evaluated based upon several individualized leadership factors, including:

- individual contribution to attaining specific operational objectives;
- building and developing individual skills and a strong leadership team; and
- developing an effective infrastructure to support business development and growth.

To Pay Competitively

We are committed to providing a total compensation program designed to retain our highest performing employees and attract strong leaders to our company. We have established compensation levels that we believe are competitive based on our board's experience with pay practices and compensation levels for companies such as ours.

To Pay Equitably

We believe that it is important to apply generally consistent guidelines for all executive officer compensation programs. In order to deliver equitable pay levels, our board considers depth and scope of accountability, complexity of responsibility, qualifications and executive performance, both individually and collectively as a team.

In addition to short- and long-term compensation, we have found it important to provide certain of our executive officers with competitive post-employment compensation. Post-employment compensation consists primarily of severance pay and benefits continuation. We believe that these benefits are important considerations for our executive officer compensation package, as they afford a measure of financial security in the event of certain terminations of their employment and also enable us to secure their cooperation following termination. We have sought to ensure that each combined compensation package is competitive at the time the package is negotiated with the executive officer. We elect to provide post-employment compensation to our executive officers on a case-by-case basis as the employment market, the qualifications of potential employees and our hiring needs dictate.

Compensation Committee Review of Compensation

We expect that following this offering, our Compensation Committee will review compensation elements and amounts for NEOs on an annual basis and at the time of a promotion or other change in level of responsibilities, as well as when competitive circumstances or business needs may require. We may, but do not currently, use a third party consultant to assist us with determining compensation levels. We expect that each year our management will compile a report of benchmark data for

executive positions for similar companies, including summaries of base salary, annual cash incentive plan opportunities and awards and long-term incentive award values. We have not yet determined the companies that we will benchmark our compensation packages against, but we expect that the Compensation Committee will determine this list after completion of this offering and that it will compare our pay practices and overall pay levels with other leading industry organizations and, where appropriate, with non-industry organizations when establishing our pay guidelines.

We expect that the CEO will provide compensation recommendations to the Compensation Committee for executives other than himself based on this data and the other considerations mentioned in this Compensation Discussion and Analysis. We expect that the Compensation Committee will recommend a compensation package that is consistent with our compensation philosophy, strategically positioned at the median of the peer group and competitive with other organizations similar to ours. The Compensation Committee will then discuss these recommendations with the CEO and will make a recommendation to the board, which the board will consider and approve, if appropriate.

We expect that the Compensation Committee will consider input from our CEO and CFO when setting performance objectives for our incentive plans. We also expect that the Compensation Committee will consider input from our CEO and CFO, regarding benchmarking and recommendations for base salary, annual incentive targets and other compensation awards. The Compensation Committee will likely give significant weight to our CEO's and CFO's judgment when assessing performance and determining appropriate compensation levels and incentive awards for our other NEOs.

Elements of Compensation

As discussed throughout this Compensation Discussion and Analysis, the compensation policies applicable to our NEOs are reflective of our pay-for-performance philosophy and encourage executive officers to enhance equity holder value over the long term.

The elements of our compensation program are:

- base salary;
- performance-based cash incentives;
- equity incentives; and
- certain additional employee benefits.

Base salary, performance-based cash incentives and long-term equity-based incentives are the most significant elements of our executive compensation program and, on an aggregate basis, they are intended to substantially satisfy our program's overall objectives. Historically, our board of directors has, and following the offering, the Compensation Committee will seek to, set each of these elements of compensation at the same time to enable it to simultaneously consider all of these elements collectively and their impact on compensation as a whole. Taking this comprehensive view of all compensation components allows us also to make compensation determinations that will reflect the principles of our compensation philosophy with respect to allocation of compensation among certain of these elements and total compensation. We strive to achieve an appropriate mix between the various elements of our compensation program to meet our compensation objectives and philosophy; however, we do not apply any rigid allocation formula in setting our executive compensation, and we may make adjustments to this approach for various positions after giving due consideration to prevailing circumstances, the individuals involved and their responsibilities and performance.

Base Salary

We provide a base salary to our executive officers to compensate them for their services during the year and to provide them with a stable source of income. The base salaries for our NEOs in 2009 were established by our board of directors, based in large part on the recommendation of our management and our board's review of other factors, including:

- the individual's performance, results, qualifications and tenure;
- the responsibilities associated with the position;
- pay mix (base salary, annual cash incentives, equity incentives and employee benefits);
- prevailing market conditions; and
- our financial position.

The annual base salaries in effect for each of our NEOs employed by us as of December 31, 2009 and December 31, 2010, are as follows.

	Base Salary ($)	
Name	2009	2010
Jack A. Khattar	396,060	407,942
Russell P. Wilson (1)	260,000	265,172
Paolo Baroldi, M.D., Ph.D. (2)	285,000	293,292
Padmanabh Bhatt, Ph.D.	258,448	266,200
Jones W. Bryan, Ph.D.	204,410	210,542

(1) Mr. Wilson joined us as our Vice President, Chief Financial Officer on May 4, 2009, and, as a result, his raise in 2010 has been prorated.

(2) Dr. Baroldi joined us as our Senior Vice President, Chief Medical Officer on January 12, 2009, and, as a result, his raise in 2010 has been prorated.

In setting base salaries for 2009, our board considered the prevailing market conditions and our financial position, including our need to raise additional funds, and decided to increase the base salary of our then-current NEOs by only 2.0% over their 2008 base salaries. In early 2010, in connection with setting the 2010 base salaries for our NEOs, our Compensation Committee considered the prevailing market conditions and our financial position, including our need to raise additional funds, and decided to increase the base salary of each of our NEOs by 3.0% over their 2009 base salaries.

In the future, we expect that salaries for executive officers will be reviewed annually, as well as at the time of a promotion or other change in level of responsibilities, or when competitive circumstances or business needs may require. As noted above, we expect that following completion of the offering, our Compensation Committee will recommend a compensation package that is consistent with our compensation philosophy, strategically positioned at market median of our to-be-determined peer group.

Performance-Based Cash Incentives

We pay annual performance-based cash incentives or bonuses in order to align the compensation of our NEOs with our short-term operational and performance goals and to provide near-term rewards for our NEOs to meet these goals. From time to time, our board has exercised its discretion in determining cash incentive amounts and making individual awards, but generally our performance-based cash incentives are made under our annual cash incentive plan. Our annual cash incentive plan for our CEO is based on the attainment by our company of objective operational goals and for all

other NEOs is based on two components: the attainment by our company of non-financial operational goals and the achievement by each NEO of personal and often subjective performance goals. The final evaluation made by our board combines often subjective assessments of each of our company's operational goals and each NEO's personal goals and does not necessarily involve a mathematical analysis or pre-established weighting of each goal. Each of these components allows us to establish appropriately aggressive performance expectations and incentives that align business performance expectations to the prevailing market and economic conditions.

Currently, our board has determined that the target bonus for our CEO under our annual cash incentive plan is based 100% on the achievement of our company objectives. The annual performance bonuses for the other NEOs are currently based 60% on the achievement of company objectives and 40% on the achievement of individual performance objectives. Our board establishes our company objectives for each fiscal year prior to the end of the first quarter of the year and determines a separate weighting for each of our company objectives.

We do not disclose our company operational goals component of our annual cash incentive plan. We believe that such disclosure would result in serious competitive harm and be detrimental to our operating performance because the components of our performance goals for 2009 contain highly sensitive data, such as regulatory, strategic partnering and other non-financial operational goals. These goals are intended to be realistic and reasonable, but challenging, in order to drive performance by our NEOs.

The personal performance goals vary for each NEO whose bonus is based in part on personal performance goals and are based on specific priorities in the NEO's area of responsibility, which may include, among others, regulatory and operating performance measures, as well as more subjective goals such as achievement of operational goals or implementation of specific plans, publications or projects in each NEO's area of management. Each year, our CEO and each NEO jointly determine what the NEO's performance priorities will be for the year, and our CEO makes a recommendation to our Compensation Committee. Our Compensation Committee reviews these recommendations, may have further discussions with our CEO or the NEO and then makes a final determination as to the personal performance goals.

After our fiscal year 2009 ended, our board reviewed the company goals that were attained and were not attained and determined that the company performance component of our annual cash incentive plan was 100% achieved. This decision was primarily due to the continued progress of SPN-538 and Epliga in the clinic and the non-dilutive financing achieved through payment of $36.9 million as consideration for a royalty-free, fully paid-up license for Intuniv. Concurrently, each of our NEOs prepared an assessment of his or her performance against his or her personal performance goals and discussed them with our CEO, who then made a recommendation to our board. Our board reviewed these recommendations, undertook a similar process with our CEO regarding his personal performance goals and made a determination of overall performance against these goals for each NEO. Taking into account the relative weighting of the corporate and personal performance objectives, with

60% for corporate objectives and 40% for individual performance objectives for each NEO, other than our CEO, we paid each NEO the following 2009 annual performance bonus in 2010:

	2009 Annual Performance Bonus		
Name	Target Bonus Percent	Target Bonus Amount ($)	Actual Bonus Payout ($)
Jack A. Khattar	40%	$ 158,424	$ 158,424
Russell P. Wilson(1)	25	65,000	41,600
Paolo Baroldi, M.D., Ph.D.(2)	25	71,250	69,825
Padmanabh Bhatt, Ph.D.	25	64,612	64,353
Jones W. Bryan, Ph.D.	25	51,103	49,876

(1) The bonus payment for Mr. Wilson, who joined us as our Vice President, Chief Financial Officer on May 4, 2009, was prorated for time worked.

(2) The bonus payment for Dr. Baroldi, who joined us as our Senior Vice President, Chief Medical Officer on January 12, 2009, was prorated for time worked.

For 2010, our board has set the following target annual performance bonus amounts:

	2010 Annual Performance Bonus	
Name	Target Bonus Percent	Target Bonus Amount ($)
Jack A. Khattar	40%	$ 163,177
Russell P. Wilson	25	66,293
Paolo Baroldi, M.D., Ph.D.	25	73,323
Padmanabh Bhatt, Ph.D.	25	66,550
Jones W. Bryan, Ph.D.	25	52,636

We expect that following this offering, our Compensation Committee will more directly assess the performance of our NEOs. Many of the personal performance goals either are qualitative in nature or have a single value or accomplishment as the determinant. Accordingly, the final evaluation made by our board often combines subjective assessments of each of the NEO's goals and does not necessarily involve a mathematical analysis or pre-established weighting of each goal. Our board ultimately determines a single percentage representing overall performance against each NEO's personal goals in the aggregate.

The target bonus percentages for our NEOs under our annual cash incentive plan for 2010 are the same as under the annual cash incentive plan for 2009. Because the components of our performance goals for 2010 contain highly sensitive data, such as regulatory, strategic partnering and other non-financial operational goals, we believe that such disclosure would result in serious competitive harm and be detrimental to our operating performance. Our performance goals are intended to be realistic and reasonable, but challenging, in order to drive performance by our NEOs.

Equity Incentives

All of our NEOs have received equity incentive grants under our 2005 Stock Plan, which is described below, in the form of restricted stock and stock options. To date, we have used restricted stock and/or stock option grants as our principal form of equity incentives because we believe they are an effective means to align the long-term interests of our executive officers with those of our stockholders. The offer of restricted stock and/or options attempts to achieve this alignment by

providing our NEOs with equity incentives that vest over time or upon the occurrence of certain events. The restricted stock and options serve also to reward our NEOs for performance.

Prior to this offering, we have used stock options and, to a very limited degree, restricted stock, as the primary long-term equity incentive vehicle. In 2005, we made our only grant of restricted stock when the fair value of our stock was lower and the awards had less income tax consequence to the executive upon vesting. Since then, we have made option grants to executive officers who are newly hired, and generally made stock option grants to existing executives at times when the board deemed appropriate in accordance with the compensation principles outlined above.

The value of an option is at risk for the NEO and is entirely dependent on the value of a share of our stock above the option's strike price. The value of our stock is dependent in many ways on management's success in achieving our goals. If the price of our common stock drops, for any reason, over the option's vesting period, the value of the option to the executive will drop and could become worthless if the price of the underlying stock remains below the option's strike price. In determining the number of stock options to be granted to executives, we take into account the individual's position, scope of responsibility, ability to affect profits and shareholder value, the individual's historic and recent performance and the value of stock options in relation to other elements of the individual executive's total compensation.

We may in the future grant other forms of equity incentives, such as restricted stock or performance shares (shares that vest only upon achievement of performance goals established at the time of grant), subject to the Compensation Committee's discretion, to ensure that our executives are focused on long-term stockholder value. We expect that following completion of the offering, the Compensation Committee will periodically review the equity awards previously awarded to management, the performance of our business and the performance of our stock. We expect that the Compensation Committee will establish levels of equity incentive holdings for our NEOs such that the portion of overall compensation that is variable is consistent with our pay-for-performance philosophy and competitive within our industry. The Compensation Committee is expected to determine appropriate levels of equity awards based on these factors and may make additional grants.

Stock options granted by us to date have an exercise price equal to or greater than the fair market value of our common stock on the date of grant and generally expire ten years after the date of grant. Stock options are subject to vesting, and most of our options vest over time at a rate of 25% of the total grant on the each of the first four anniversaries of the vesting start date, although we have granted some performance options that vest upon attaining certain predetermined company objectives.

The amount of each of these awards was designed to establish a desired percentage ownership level for each of our NEOs that our board believed was commensurate with their respective roles and responsibilities and based on similarly situated employees of other companies that members of our board had experience with.

Additional Employee Benefits

We provide our executive officers with employee benefits that the board believes are reasonable and in the best interests of the company and its stockholders, which consist of the following benefits:

- health insurance;
- vacation and sick days;
- long-term disability; and
- a 401(k) plan.

We have no structured perquisite benefits, such as club memberships or company vehicles, for any executive officer, including our NEOs. We believe the benefits we provide are generally equivalent to the benefits provided by comparable companies.

Accounting and Tax Considerations

In determining which elements of compensation are to be paid, and how they are weighted, we will take into account whether a particular form of compensation will be deductible under Section 162(m) of the Code. Section 162(m) generally limits the deductibility of compensation paid to our NEOs to $1 million during any fiscal year unless such compensation is "performance-based" under Section 162(m). However, under a Section 162(m) transition rule for compensation plans or agreements of corporations which are privately held and which become publicly held in an initial public offering, compensation paid under a plan or agreement that existed prior to the initial public offering will not be subject to Section 162(m) until the earliest of (1) the expiration of the plan or agreement; (2) a material modification of the plan or agreement; (3) the issuance of all employer stock and other compensation that has been allocated under the plan; or (4) the first meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the year of the initial public offering. We refer to the earliest of these events to occur as the "Transition Date." After the Transition Date, rights or awards granted under the plan will not qualify as "performance-based compensation" for purposes of Section 162(m) unless such rights or awards are granted or vest upon pre-established objective performance goals, the material terms of which are disclosed to and approved by our stockholders.

Our compensation program is intended to maximize the deductibility of the compensation paid to our NEOs to the extent that we determine it is in our best interests. Consequently, we may rely on the exemption from Section 162(m) afforded to us by the transition rule described above for compensation paid pursuant to our pre-existing plans.

Many other Code provisions, SEC regulations and accounting rules affect the payment of executive compensation and are generally taken into consideration as we develop our compensation programs. Our goal is to create and maintain plans that are efficient, effective and in full compliance with these requirements.

When determining our compensation policies and practices, our board considered various matters relative to the development of a reasonable and prudent compensation program, including whether the policies and practices were reasonably likely to have a material adverse effect on us. We believe that the mix and design of our executive compensation plans and policies do not encourage management to assume excessive risks and are not reasonably likely to have a material adverse effect on us for the following reasons: we offer an appropriate balance of short and long-term incentives and fixed and variable amounts; our variable compensation is based on a balanced mix of criteria; and our Compensation Committee has the authority to adjust variable compensation as appropriate.

Compensation Tables

The following tables provide information regarding the compensation earned during our most recently completed fiscal year by our NEOs.

Summary compensation table

The following table shows the compensation earned by our NEOs during the fiscal year ended December 31, 2009.

Name and Principal Position	Year	Base Salary ($)	Non-Equity Incentive Plan Compensation Bonus ($)(3)	Option Awards ($)(4)	All Other Compensation ($)(5)	Total ($)
Jack A. Khattar *Chief Executive Officer, President*	2009	$ 395,737	$ 158,424	—	$ 11,931	$ 566,092
Russell P. Wilson(1) *Vice President, Chief Financial Officer*	2009	161,667	41,600	262,650	7,225	473,142
Paolo Baroldi, M.D., Ph.D.(2) *Senior Vice President, Chief Medical Officer*	2009	265,635	69,825	51,750	15,001	402,211
Padmanabh Bhatt, Ph.D. *Vice President, Pharmaceutical Sciences*	2009	258,237	64,353	—	13,334	335,924
Jones W. Bryan, Ph.D. *Vice President, Business Development*	2009	204,243	49,876	—	11,195	265,314

(1) The compensation for Mr. Wilson, who joined us on May 4, 2009, has been prorated for time worked.

(2) The compensation for Dr. Baroldi, who joined us on January 12, 2009, has been prorated for time worked.

(3) Amounts represent annual performance bonus compensation earned for the year ended December 31, 2009 based on pre-established performance objectives. Annual performance bonus compensation for 2009 was paid in 2010. Our annual performance bonus program is described in more detail under "—Compensation Discussion and Analysis—Performance-Based Cash Incentives."

(4) In accordance with ASC Topic 718, or ASC 718, formerly Statement of Financial Accounting Standards No. 123R, our NEOs will only realize compensation to the extent the market price of our common stock is greater than the exercise price of such stock options. For information regarding assumptions underlying the valuation of equity awards, see note 8 to our financial statements appearing at the end of this prospectus.

(5) Amounts include the premium amounts paid by us for life insurance and long-term disability insurance coverage for each NEO, plus the employer matching contributions made on behalf of each NEO to our 401(k) plan.

Grants of Plan-Based Awards

During fiscal year ended December 31, 2009, each of our NEOs participated in our performance-based cash incentive plan in which each officer was eligible for the awards set forth in the following table. For a detailed discussion of our performance-based cash incentive plan, refer to "—Compensation Discussion and Analysis—Performance-Based Cash Incentives." The following table also sets forth information regarding equity awards granted to our NEOs during the year ended December 31, 2009. Equity awards made to our NEOs are described in more detail under "—Compensation Discussion and Analysis—Equity Incentives" and non-equity incentive plan awards

made to our NEOs are described in more detail under "—Compensation Discussion and Analysis—Performance-Based Cash Incentives."

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards		All Other Options Awards: Number of Securities Underlying Options(#)	Exercise or Base Price of Option Awards(1) ($/sh)	Grant Date Fair Value of Stock and Options Awards(2) ($)
		Target ($)	Maximum ($)			
Jack A. Khattar	—	$ 158,424	$ 158,424	—	—	—
Russell P. Wilson	12/15/2009	—	—	230,000	$ 1.76(3)	$ 236,900
	12/15/2009	—	—	25,000	1.76(3)	25,750
	—	65,000	65,000	—	—	—
Paolo Baroldi, M.D., Ph.D.	1/20/2009	—	—	200,000	0.40	46,000
	1/20/2009	—	—	25,000	0.40	5,750
	—	71,250	71,250	—	—	—
Padmanabh Bhatt, Ph.D.	—	64,612	64,612	—	—	—
Jones W. Bryan, Ph.D.	—	51,103	51,103	—	—	—

(1) Amounts represent the fair value of our common stock as determined in good faith by our board on the date of the grant.

(2) Amounts reflect the aggregate grant date fair value of the awards calculated in accordance with ASC 718.

(3) Stock option was repriced by our board on November 2, 2010. The new exercise price is $0.64 per share.

Outstanding Equity Awards at Fiscal Year-End

The table below sets forth certain information regarding the outstanding equity awards held by our NEOs as of December 31, 2009.

		Option Awards					Stock Awards	
Name		Number of Securities Underlying the Unexercised Options (#) Exercisable	Number of Securities Underlying the Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Security Underlying Unexercisable Unearned Options (#)	Option Exercise Price ($)(6)	Option Expiration Date	Equity Incentive Plan Awards: Number of Unearned Shares That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares That Have Not Vested (#)
Jack A. Khattar	(1)(7)	—	—	—	—	—	411,765	
Russell P. Wilson	(2)(3)	—	230,000		$ 1.76	12/15/2019	—	—
	(1)(3)	—	—	25,000	$ 1.76	12/15/2019	—	—
Paolo Baroldi, M.D., Ph.D.	(2)	—	200,000	—	$ 0.40	1/19/2019	—	—
	(1)	—		25,000	$ 0.40	1/19/2019	—	—
Padmanabh Bhatt, Ph.D.	(2)	200,000	—	—	$ 0.10	1/17/2016	—	—
	(4)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(1)	—	—	25,000	$ 0.10	1/17/2016	—	—
	(5)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(2)	6,000	6,000	—	$ 0.10	2/13/2017	—	—
Jones W. Bryan, Ph.D.	(2)	200,000	—	—	$ 0.10	1/17/2016	—	—
	(4)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(1)	—	—	25,000	$ 0.10	1/17/2016	—	—
	(5)	25,000	—	—	$ 0.10	1/17/2016	—	—
	(2)	6,000	6,000	—	$ 0.10	2/13/2017	—	—

(1) All of these vested equity awards originally vested based on the achievement of our filing our first NDA prior to December 22, 2010. On November 2, 2010, the performance condition for vesting of these non-vested awards was modified by our board to extend the performance date from December 22, 2010 to March 31, 2011.

(2) These stock options vest over four years in four equal installments of 25% each on the first four anniversaries from the date of grant.

(3) On November 2, 2010, this option was repriced from $1.76 to $0.64 per share.

(4) These stock options vested upon the completion of our first clinical trial in humans and was satisfied in 2006.

(5) These stock options vested upon the launch of a partnered product and was satisfied in 2006.

(6) The market value of each equity award is based on the fair value of per share of our common stock as of the date of grant, as determined in good faith by our board.

(7) There was no public market for our common stock at December 31, 2009. Accordingly, the value of unvested equity awards has been estimated based on an assumed initial public offering price of $ per share, the midpoint of the range set forth on the cover page of this prospectus.

Option Exercises and Stock Vested

There were no option awards exercised by any of our NEOs during fiscal year ended December 31, 2009. Our CEO had 617,647 shares of restricted stock vest during fiscal year ended December 31, 2009.

Pension Benefits

Our NEOs did not participate in or have account balances in any qualified or nonqualified defined benefit plans sponsored by us. Our board of directors or Compensation Committee may elect to adopt qualified or nonqualified benefit plans in the future if it determines that doing so is in our best interest.

Deferred Compensation

We do not currently provide any deferred compensation program or benefits but may elect to do so in the future.

Employment Agreement and Severance Benefits

Jack A. Khattar

On December 22, 2005, we entered into an Employment Agreement with Mr. Khattar, our President and Chief Executive Officer, providing for his continued employment, effective as of the signing date. This employment agreement provides that Mr. Khattar's employment is at-will and may be terminated by either us or him at any time for any or no reason. Mr. Khattar's base salary was originally set at $359,000 per year, subject to review and increases from time to time by our board based on Mr. Khattar's and the company's performance. Mr. Khattar is also eligible to receive an annual bonus payment of up to 40% of his annual base salary, based on achievement of certain performance milestones identified by our board in consultation with Mr. Khattar. Furthermore, he is eligible to participate in our group benefits programs, including but not limited to, medical insurance, vacation and retirement plans, and will be provided with life insurance and the ability to participate in a 401(k) plan.

In the event Mr. Khattar is terminated by us without cause, as defined in the employment agreement, or he resigns with good reason, as defined in the employment agreement to include, among other things, any material reduction in base compensation or material diminution in title, duties or responsibilities as President and Chief Executive Officer, Mr. Khattar will be entitled to receive (i) continued payment of his base salary for 18 months, (ii) the most recent annual bonus paid to him, and (iii) continuation of his taxable and non-taxable benefits for 18 months, subject to the limits under applicable law. In the event that Mr. Khattar is terminated for cause or he terminates his employment without good reason, Mr. Khattar will not be entitled to the payments and benefits described above unless mutually agreed upon in writing. Mr. Khattar's employment agreement also includes a non-solicitation covenant and a non-compete covenant for at least one year following the termination of Mr. Khattar's employment.

In addition, the grant agreements for Mr. Khattar's restricted stock provided for 100% acceleration of unvested restricted stock in connection with a change in control because our board of directors believes that this accelerated vesting provides Mr. Khattar with additional incentive to assist in the successful completion of a change of control transaction.

Other NEOs

Pursuant to the terms of the offer letters with Dr. Bryan and Dr. Bhatt, they are each entitled to receive six months of severance pay in connection with a restructuring of Supernus that results in the elimination of their respective positions.

Potential Payments Upon Termination and Change in Control

Assuming Mr. Khattar's employment is terminated without cause or he resigns for good reason, or he resigns for good reason after a change of control, each such term as defined in Mr. Khattar's

employment agreement, on December 31, 2009, the estimated values of payments and benefits to Mr. Khattar are set forth in the following table. See "—Employment Agreement and Severance Benefits." In addition, the following table also sets forth (i) the amounts payable upon a change of control in connection with the acceleration of vesting of Mr. Khattar's restricted stock assuming the change of control occurred on December 31, 2009, and (ii) the amounts payable upon a restructuring of Supernus that results in the elimination of Dr. Bryan's or Dr. Bhatt's respective positions assuming the restructuring occurred on December 31, 2009.

	Benefit	Termination Upon a Restructuring	Termination Without Cause or Resignation for Good Reason	Resignation for Good Reason After a Change of Control	Acceleration Upon a Change of Control
Jack A. Khattar	Base salary continuation		$ 594,090	$ 594,090	—
	Bonus(1)		158,424	158,424	—
	Continuation of benefits(2)		16,947	16,947	—
	Vesting of restricted stock(3)		—		$
	Total		$ 769,461	$	$
Padmanabh Bhatt, Ph.D.	Severance	$ 129,224	—	—	—
James W. Bryan, Ph.D.	Severance	$ 102,205	—	—	—

(1) Amount shown for bonus in connection with a change in control represents the bonus payment Mr. Khattar would have earned based on the assumption that his employment terminated as of the last day of fiscal 2009, in accordance with his employment agreement. The amount set forth in the table reflects the most recent bonus paid to Mr. Khattar (which was the 2009 bonus paid in early 2010) because this table assumes that he was terminated as of the last day of the fiscal year and we had not yet determined the amount of the bonuses payable to him under our annual cash incentive plan for fiscal 2010.

(2) Amounts shown for continuation of benefits represent estimates for the continuation of health, medical, life and group life insurance benefits afforded to Mr. Khattar and eligible family members in accordance with his employment agreement.

(3) There was no public market for our common stock at December 31, 2009. Accordingly, the value of accelerated equity awards has been estimated based on an assumed initial public offering price of $ per share, the midpoint of the range set forth on the cover page of this prospectus.

Director Compensation

Upon election to our board, each of our non-employee directors who are not affiliated with any 5% or greater stockholder was granted options to purchase shares of our common stock, subject to an annual vesting over a four-year period from the date of grant. The exercise price of the options was greater than or equal to the fair market value of a share of our common stock at the time of grant. In addition, our non-employee directors who are not affiliated with any 5% or greater stockholder receive $20,000 annually. All directors have received and will continue to receive reimbursement for reasonable out-of-pocket expenses incurred in connection with attendance at meetings of the board.

The following table sets forth a summary of the compensation we paid to Mr. Nuerge in 2009. None of the other members of our board received any compensation from us for their service on our board, other than reimbursement for reasonable out-of-pocket expenses as described above.

Name	Fees Earned or Paid in Cash ($)	Total ($)
William A. Nuerge	20,000	20,000

Benefit Plans

Our officers, employees, non-employee directors and other key persons (including consultants and prospective employees) are entitled to participate in various benefit plans as described below, subject to the discretion of the administrators of the plans. Our equity awards are granted under our 2005 Stock Plan. There are an aggregate of 8,000,000 shares of common stock authorized under this plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization. Generally, shares that are forfeited or canceled from awards under the 2005 Stock Plan also will be available for future awards.

2005 Stock Plan

Introduction. Our 2005 Stock Plan was adopted by our board and approved by our stockholders on December 21, 2005. The 2005 Stock Plan permits us to make grants of stock options (both incentive stock options and non-qualified stock options), purchase rights of common stock and awards of common stock to our executives, employees, directors, consultants and advisors.

Share Reserve. 8,000,000 shares of common stock are reserved for the issuance of awards under our 2005 Stock Plan. This number is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization. Generally, shares that expire or terminate for any reason without having been exercised in full shall be available for subsequent grants under our 2005 Stock Plan.

Administration. Our 2005 Stock Plan is administered by either our board or a committee of our board. The administrator has full power and authority to select the participants to whom awards will be granted, to make any combination of awards to participants, to accelerate the exercisability or vesting of any award and to determine the specific terms and conditions of each award, subject to the provisions of the 2005 Stock Plan.

Eligibility. All officers, employees, directors and other key persons (including consultants and advisors) are eligible to participate in the 2005 Stock Plan, subject to the discretion of the administrator.

Types of Awards. The types of awards that are available for grant under the 2005 Stock Plan are:

- incentive stock options;
- non-qualified stock options;
- purchase rights; and
- common stock awards.

The exercise price of stock options awarded under the 2005 Stock Plan may not be less than either (i) 100% of the fair market value of our common stock on the date of the option grant, with the term of each option not exceeding ten years from the date of grant, or (ii) for any employee who is the owner, at the time of the grant of such options, of more than 10% of the total combined voting power of all classes of stock of the Company (after taking into account the attribution of stock ownership rules of Section 424(d) of the Code), 110% of fair market value of our common stock on the date of the option grant, with the term of each option not exceeding five years from the date of grant. The administrator will determine at what time or times each option may be exercised and, subject to the provisions of the 2005 Stock Plan, the period of time, if any, after retirement, death, disability or other termination of employment during which options may be exercised. To qualify as incentive stock options, stock options must meet additional federal tax requirements, including a $100,000 limit on the value of shares subject to incentive options which first become exercisable in any one calendar year, and a shorter term and higher minimum exercise price in the case of certain large stockholders.

Purchase rights allow the recipient the opportunity to make direct purchases of the Company's common stock in accordance with terms and conditions established by the administrator. Awards of common stock are awards entitling the grantee to receive shares of the Company's common stock in accordance with terms and conditions established by the administrator.

Transferability. Our 2005 Stock Plan does not allow for the transfer of incentive stock options and all other options granted to Reporting Persons, and may be exercisable only by the grant holder during his or her lifetime, except that non-qualified options may be transferred pursuant to a qualified domestic relations order (as defined in the Code).

Change in Control. Except as otherwise provided by the administrator and evidenced in a particular award, in the event of a consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding shares of common stock are exchanged for securities, cash or other property of any other corporation or business entity, or in the event of a liquidation of the Company, the administrator may, in its discretion, terminate all stock options granted under the 2005 Stock Plan unless the successor entity agrees to assume the awards. In the event the awards are to be terminated, the administrator may provide for payment in exchange for the termination of the awards. Furthermore, at any time the administrator may provide for the acceleration of exercisability and/or vesting of an award.

Term. Unless earlier terminated by our board of directors, the 2005 Stock Plan will terminate, with respect to incentive stock options only, upon the earlier of (A) the close of business on the day next preceding the tenth anniversary of the date the Board of Directors approved the 2005 Stock Plan, or (B) the date on which all shares available for issuance under the 2005 Stock Plan shall have been issued. Unless sooner terminated, the 2005 Stock Plan will terminate with respect to options, purchase rights and awards of common stock which are not incentive stock options on the date specified in (B) above.

Amendment or Termination. Our board of directors may amend, suspend, or terminate the 2005 Stock Plan in any respect at any time, subject to stockholder approval where such approval is required by applicable law or stock exchange rules. Further, any material amendments to the 2005 Stock Plan will be subject to approval by our stockholders, including any amendment that increases the number of shares available for issuance under the 2005 Stock Plan or expands the types of awards available under, the eligibility to participate in, or the duration of, the plan. No amendment to the 2005 Stock Plan may materially impair any of the rights of a participant under any awards previously granted without his or her consent.

Limitation of Liability and Indemnification Arrangements

As permitted by the Delaware General Corporation Law, we intend to adopt provisions in our amended and restated certificate of incorporation and amended and restated bylaws, which will be effective upon the completion of this offering, that limit or eliminate the personal liability of our directors. Consequently, a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any unlawful payments related to dividends or unlawful stock repurchases, redemptions or other distributions; or
- any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

In addition, our amended and restated bylaws, which will be effective upon the completion of this offering, provide that:

- we will indemnify our directors, officers and, at the discretion of our board, certain employees to the fullest extent permitted by the Delaware General Corporation Law; and
- advance expenses, including attorneys' fees, to our directors and, at the discretion of our board, to our officers and certain employees, in connection with legal proceedings, subject to limited exceptions.

We also intend to enter into indemnification agreements with each of our executive officers and directors. These agreements will provide that we will indemnify each of our directors to the fullest extent permitted by the Delaware General Corporation Law and advance expenses to each indemnitee in connection with any proceeding in which indemnification is available.

We also maintain management liability insurance to provide insurance coverage to our directors and officers for losses arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act of 1933, as amended, or the Securities Act. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the registrant pursuant to the foregoing provisions, we have been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

These provisions may discourage stockholders from bringing a lawsuit against our directors in the future for any breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors, officers and certain employees pursuant to these indemnification provisions. We believe that these provisions, the indemnification agreements and the insurance are necessary to attract and retain talented and experienced directors and officers.

At present, there is no pending litigation or proceeding involving any of our directors, officers or employees in which indemnification will be required or permitted. We are not aware of any threatened litigation or proceeding that might result in a claim for such indemnification.

Rule 10b5-1 Sales Plans

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend or terminate the plan in some circumstances. Our directors and executive officers may also buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material, nonpublic information. However, pursuant to the terms of the lock-up agreements described under "Underwriting," no Rule 10b5-1 plan may provide for the transfer of common stock during the restricted period ending 180 days after the date of this prospectus (as such period may be extended under certain circumstances).

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than the compensation agreements and other arrangements described under "Compensation Discussion and Analysis" in this prospectus and the transaction set forth below, since January 1, 2007, there has not been any transaction or series of transactions to which we were or are a party in which the amount involved exceeded or exceeds $120,000 and in which any director, executive officer, holder of more than 5% of any class of our voting securities or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest. We believe the transaction set forth below was executed on terms no less favorable to us than we could have obtained from unaffiliated third parties.

In May 2009, we entered into an amendment to a license agreement with Shire LLC, a holder of Series A convertible preferred stock, whereby Shire LLC and its affiliates paid us a one-time, lump-sum payment of $36.9 million in return for a fully paid-up license for one of its products that utilizes our proprietary technologies. All four criteria necessary to recognize revenue in accordance with ASC 605-10-S25, *Revenue Recognition—Overall—Recognition*, were met during 2009 related to this transaction. Accordingly, the entire amount was recorded as royalty revenue in the consolidated statement of operations.

Transactions with Our Executive Officers, Directors and 5% Stockholders

Indemnification Agreements

We intend to enter into indemnification agreements with each of our directors and certain of our executive officers. These agreements will require us to indemnify these individuals and, in certain cases, affiliates of such individuals, to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), certain of our directors and 5% stockholders are party to an investor rights agreement providing for rights to register under the Securities Act certain shares of our capital stock. For more information regarding the registration rights granted pursuant to this agreement, see the section entitled "Description of Capital Stock—Registration Rights."

Employment Agreement and Offer Letters

We have entered into an employment agreement with our chief executive officer and offer letters with certain of our named executive officers, or NEOs, each of which provides for certain severance benefits, among other things. For more information regarding this agreement and the offer letters with certain of our NEOs, see the section entitled "Executive Compensation—Employment Agreement and Severance Benefits."

Stock Option Awards

Our 2005 Stock Plan permits us to make grants of stock options, purchase rights of common stock and awards of common stock to our executives, employees, directors, consultants and advisors. For more information regarding stock option awards and restricted stock granted to our named executive officers and directors, see the sections entitled "Executive Compensation—Outstanding Equity Awards at Fiscal Year End" and "Director Compensation."

Procedures for Related Party Transactions

Prior to the effectiveness of the registration statement of which this prospectus forms a part, we plan to adopt formal policies or procedures for the review, approval, or ratification of certain related party transactions that may be required to be reported under the SEC disclosure rules. Currently, such transactions are reviewed by management on a case-by-case basis.

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of September 30, 2010, before and after the completion of this offering, and gives effect to the automatic conversion of all outstanding shares of our preferred stock into 49,000,000 shares of common stock upon the closing of this offering, by: (i) our named executive officers and our directors individually, (ii) all of our executive officers and directors, as a group, and (iii) any person who, to our knowledge, owns 5% or more of the common stock on an as-converted basis. Unless otherwise indicated, the address for each of the stockholders listed in the table below is c/o Supernus Pharmaceuticals, Inc., 1550 East Gude Drive, Rockville, Maryland 20850.

Beneficial ownership is determined in accordance with the rules and regulations of the United States Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or exercisable within sixty (60) days of September 30, 2010 are deemed outstanding. These shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Except as indicated in the footnotes to this table and pursuant to applicable community property laws, we believe each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite that stockholders' name.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders:			
New Enterprise Associates 11, Limited Partnership and its affiliates(1) c/o New Enterprise Associates 1954 Greenspring Drive Suite 600 Timonium, MD 21093	25,000,000	44.8%	
OrbiMed Private Investments II, LP and its affiliates(2) c/o OrbiMed Advisors LLC 767 Third Avenue, 30th Floor New York, NY 10017	10,000,000	17.9%	
Abingworth Bioventures IV LP and its affiliates(3) c/o Abingworth Management Inc 890 Winter Street, Suite 150 Waltham, MA 02451	10,000,000	17.9%	
Shire LLC(4) 9200 Brookfield Court Suites 105 & 108 Florence, KY 41042	4,000,000	7.2%	

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
Executive Officers and Directors:			
Jack A. Khattar(5)	6,088,235	10.9%	
Russell P. Wilson	—	*	
Paolo Baroldi, M.D., Ph.D(6)	50,000	*	
Padmanabh P. Bhatt, Ph.D.(7)	259,000	*	
Jones W. Bryan, Ph.D.(8)	259,000	*	
M. James Barrett, Ph.D.(9)	25,000,000	45.1%	
Michael Bigham(10)	10,000,000	18.1%	
Frederick M. Hudson(11)	—	*	
Charles W. Newhall, III(12)	25,000,000	45.1%	
William A. Nuerge	35,000	*	
Michael B. Sheffery, Ph.D.(13)	10,000,000	18.1%	
All executive officers and directors as a group (12 persons)(14)	51,766,235	92.4%	

* Less than one percent.

(1) Includes 24,965,000 shares of common stock issuable upon the automatic conversion of 24,965,000 shares of Series A convertible preferred stock held by New Enterprise Associates 11, Limited Partnership; and 35,000 shares of common stock issuable upon the automatic conversion of 35,000 shares of Series A convertible preferred stock held by NEA Ventures 2005, L.P.

(2) Includes 6,673,891 shares of common stock issuable upon the automatic conversion of 6,673,891 shares of Series A convertible preferred stock held by OrbiMed Private Investments II, LP; 2,498,842 shares of common stock issuable upon the automatic conversion of 2,498,842 shares of Series A convertible preferred stock held by OrbiMed Private Investments II (QP), LP; and 827,267 shares of common stock issuable upon the automatic conversion of 827,267 shares of Series A convertible preferred stock held by UBS Juniper Crossover Fund, LLC.

(3) Includes 9,915,000 shares of common stock issuable upon the automatic conversion of 9,915,000 shares of Series A convertible preferred stock held by Abingworth Bioventures IV LP, or ABV IV; and 85,000 shares of common stock issuable upon the automatic conversion of 85,000 shares of Series A convertible preferred stock held by Abingworth Bioventures IV Executives LP, or ABV IV Executives.

(4) Includes 4,000,000 shares of common stock issuable upon the automatic conversion of 4,000,000 shares of Series A convertible preferred stock held by Shire LLC.

(5) Excludes 411,765 shares of non-vested restricted stock held by Mr. Khattar, which are subject to vesting based on the achievement of certain performance measures.

(6) Consists of 50,000 shares of common stock issuable to Dr. Baroldi upon the exercise of options within 60 days of September 30, 2010.

(7) Consists of 259,000 shares of common stock issuable to Dr. Bhatt upon the exercise of options within 60 days of September 30, 2010.

(8) Consists of 259,000 shares of common stock issuable to Dr. Bryan upon the exercise of options within 60 days of September 30, 2010.

(9) Includes 25,000,000 shares of common stock issuable upon the automatic conversion of 25,000,000 shares of Series A convertible preferred stock held by New Enterprise Associates 11, Limited Partnership and its affiliates. Dr. Barrett, a member of our board, is a partner of New Enterprise Associates, or NEA, and disclaims beneficial ownership of the shares of capital stock held by NEA, except to the extent of his pecuniary interest therein.

(10) Includes 10,000,000 shares of common stock issuable upon the automatic conversion of 10,000,000 shares of Series A convertible preferred stock held by ABV IV and ABV IV Executives. Abingworth Management Limited, or AML, serves as investment manager of each of ABV IV and ABV Executives and may be deemed to share voting and dispositive power with respect to the securities owned by ABV IV and ABV IV Executives. Michael Bigham is a director of AML, and in such capacity may be deemed to beneficially own the securities owned of record by ABV IV and ABV IV Executives, but disclaims beneficial ownership of such securities except to the extent of his pecuniary interest therein.

(11) Mr. Hudson was appointed to our board on November 16, 2010.

(12) Includes 25,000,000 shares of common stock issuable upon the automatic conversion of 25,000,000 shares of Series A convertible preferred stock held by New Enterprise Associates 11, Limited Partnership and its affiliates. Mr. Newhall, a member of our board, is a partner of NEA and disclaims beneficial ownership of the shares of capital stock held by NEA, except to the extent of his pecuniary interest therein.

(13) Includes 10,000,000 shares of common stock issuable upon the automatic conversion of 10,000,000 shares of Series A convertible preferred stock held by OrbiMed Private Investments II, LP and its affiliates. Dr. Sheffery, a member of our board, is a member of OrbiMed Advisors LLC, or OrbiMed, and disclaims beneficial ownership of the shares of capital stock held OrbiMed, except to the extent of his pecuniary interest therein.

(14) Includes 49,000,000 shares of common stock issuable upon the automatic conversion of 49,000,000 shares of Series A convertible preferred stock, and includes 643,000 shares of common stock issuance to our of directors and executive officers upon the exercise of options within 60 days of September 30, 2010.

DESCRIPTION OF CAPITAL STOCK

General

Our Amended and Restated Certificate of Incorporation, which will become effective upon the closing of this offering, authorizes the issuance of up to shares of common stock, par value $0.001 per share, and shares of preferred stock, par value $0.01 per share. As of September 30, 2010, there were shares of common stock outstanding (after giving effect to the automatic conversion of all outstanding shares of preferred stock into shares of common stock and the for reverse stock split). As of September 30, 2010, we had approximately record holders of our capital stock. All of our outstanding shares of preferred stock will automatically convert into shares of common stock upon the closing of this offering. After the closing of this offering and after giving effect to the conversion of our preferred stock and the for reverse stock split, we will have shares of common stock and no shares of preferred stock outstanding. In addition, as of September 30, 2010, shares of our common stock were reserved for future grants under our 2005 Stock Plans, and options to purchase shares of our common stock were outstanding.

The description below gives effect to the adoption of our Amended and Restated Bylaws and is qualified in its entirety by reference to these documents, copies of which are filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Upon the completion of this offering, we will be authorized to issue one class of common stock. Holders of our common stock are entitled to one vote for each share of common stock held of record for the election of directors and on all matters submitted to a vote of stockholders. Holders of our common stock are entitled to receive dividends ratably, if any, as may be declared by our board of directors out of legally available funds, subject to any preferential dividend rights of any preferred stock then outstanding. Upon our dissolution, liquidation or winding up, holders of our common stock are entitled to share ratably in our net assets legally available after the payment of all our debts and other liabilities, subject to the preferential rights of any preferred stock then outstanding. Holders of our common stock have no preemptive, subscription, redemption or conversion rights. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future. Except as described under "—Antitakeover Effects of Delaware Law and Provisions of Our Certificate of Incorporation and Bylaws" below, a majority vote of the holders of common stock is generally required to take action under our amended and restated certificate of incorporation and amended and restated bylaws.

Preferred Stock

Upon the completion of this offering, our board of directors will be authorized, without action by the stockholders, to designate and issue up to an aggregate of shares of preferred stock in one or more series. Our board of directors can designate the rights, preferences and privileges of the shares of each series and any of its qualifications, limitations or restrictions. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible future financings and acquisitions and other corporate purposes, could, under certain circumstances, have the effect of restricting dividends on our common stock, diluting the voting power of our common stock, impairing the liquidation rights of our common stock, or delaying, deferring or preventing a change in control of our company, which might harm the market price of our common stock.

Our board of directors will make any determination to issue such shares based on its judgment as to our company's best interests and the best interests of our stockholders. Any shares of our Series A convertible preferred stock outstanding immediately prior to this offering will automatically convert into shares of our common stock on a one-for-one basis in connection with this offering. Upon the completion of this offering, we will have no shares of preferred stock outstanding and we have no current plans to issue any shares of preferred stock.

Registration Rights

Demand Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), the holders of approximately shares of our common stock will be entitled to certain demand registration rights. If holders of registrable securities then outstanding request a registration having a reasonably anticipated aggregate offering price to the public of at least $, we may be required to register their shares. After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), certain holders have the right to make two requests that we register all or a portion of their shares of our common stock.

Piggyback Registration Rights

After expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), in the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other stockholders, the holders of approximately shares of our common stock will be entitled to certain "piggyback" registration rights allowing the holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, other than with respect to a registration related to the shares issuable upon conversion of debt securities or employee benefit plans, the holders of these shares of our common stock are entitled to notice of the registration and have the right, subject to limitations that the underwriters may impose on the number of shares included in the registration, to include their shares in the registration.

Form S-3 Registration Rights

After the expiration of a 180-day period following the completion of this offering (as may be extended under certain circumstances), the holders of approximately shares will be entitled to certain Form S-3 registration rights if we are eligible to file a registration statement on Form S-3. As a result, these holders will have the right to demand that we file a registration statement on Form S-3 so long as the aggregate value of the securities to be sold under the registration statement on Form S-3 is at least $500,000, subject to specified exceptions.

Antitakeover Effects Of Delaware Law And Provisions Of Our Certificate Of Incorporation And Bylaws

Delaware Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law. This statute regulating corporate takeovers prohibits a Delaware corporation from engaging in any business combination with

any interested stockholder for three years following the date that the stockholder became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the interested stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66^2/3\%$ of the outstanding voting stock which is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is any person who, together with such person's affiliates and associates (i) owns 15% or more of a corporation's voting securities or (ii) is an affiliate or associate of a corporation and was the owner of 15% or more of the corporation's voting securities at any time within the three year period immediately preceding a business combination of the corporation governed by Section 203. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board does not approve in advance. We also anticipate that Section 203 may discourage takeover attempts that might result in a premium over the market price for the shares of common stock held by our stockholders.

Certificate Of Incorporation And Bylaw Provisions

Provisions of our certificate of incorporation and bylaws, which will be effective upon the closing of this offering, may have the effect of making it more difficult for a third party to acquire, or discourage a third party from attempting to acquire, control of our company by means of a tender offer, a proxy contest or otherwise. These provisions may also make the removal of incumbent officers and directors more difficult. These provisions are intended to discourage certain types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of our company to first negotiate with us. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions may make it more difficult for stockholders to take specific corporate actions and could have the effect of delaying or preventing a change in control.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is .

Listing

We intend to apply to list our shares of common stock for quotation on The NASDAQ Global Market under the symbol "SUPN."

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and there can be no assurance that a significant public market for our common stock will develop or be sustained after this offering. Future sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options, in the public market following this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Upon completion of this offering, we will have shares of common stock outstanding, assuming (1) the conversion of all outstanding shares of preferred stock, (2) no exercise of any options outstanding as of September 30, 2010 and (3) no exercise of the underwriters' option to purchase additional shares from us. All shares sold in this offering, plus any shares issued upon exercise of the underwriters' option to purchase additional shares from us, will be freely tradable without restriction under the Securities Act, unless purchased by our "affiliates" as that term is defined in Rule 144 under the Securities Act. The remaining shares of common stock outstanding are "restricted securities" within the meaning of Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 701 or meet the safe harbor qualifications under Rule 144 under the Securities Act as summarized below.

The holders of shares of outstanding common stock as of the closing of this offering and the holders of shares of common stock underlying options as of the closing of this offering, including all of our officers and directors, have entered into lock-up agreements with the underwriters pursuant to which they have generally agreed, subject to certain exceptions, not to offer or sell any shares of common stock or securities convertible into or exchangeable or exercisable for shares of common stock for a period of 180 days from the date of this prospectus without the prior written consent of Citigroup Global Markets Inc. and Barclays Capital Inc. At any time and without public notice, Citigroup Global Markets Inc. and Barclays Capital Inc. may, in their sole discretion, release some or all of the securities from these lock-up agreements. In general, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. See "Underwriting."

Rule 144

In general, under Rule 144 under the Securities Act, as in effect on the date of this prospectus, a person who is one of our affiliates and has beneficially owned shares of our common stock for at least six months would be entitled to sell within any three month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of common stock then outstanding, which will equal approximately shares immediately after the completion of this offering; or
- the average weekly trading volume of our common stock on the NASDAQ Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

In general, under Rule 144 under the Securities Act, as in effect on the date of this prospectus, a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than an affiliate, is entitled to sell the shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, and will be subject only to the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

Shares of our common stock will qualify for resale under Rule 144 within 180 days of the date of this prospectus, subject to the lock-up agreements as described herein and under "Underwriting" in this prospectus, and to the extent such shares have been released from any repurchase option that we may hold.

Rule 701

Any of our employees, officers, directors or consultants who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701. Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. Rule 701 further provides that non-affiliates may sell such shares in reliance on Rule 144 without having to comply with the holding period, public information, volume limitation or notice provisions of Rule 144.

Neither Rule 144 nor Rule 701 supersedes the contractual obligations of our security holders set forth in the lock-up agreements described above.

Lock-up Agreements

We, our officers and directors, and our other stockholders have agreed that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Citigroup Global Markets Inc. and Barclays Capital Inc., dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. Citigroup Global Markets Inc. and Barclays Capital Inc. in their sole discretion may release any of the securities subject to these lock-up agreements at any time without notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Registration Rights

After the expiration of the 180-day period following the completion of this offering (as may be extended under certain circumstances), holders of our preferred stock convertible into 49,000,000 shares of our common stock have demand and piggyback registration rights with respect to the shares of common stock to be issued upon conversion of their preferred stock. By exercising their registration rights and causing a large number of shares to be registered and sold in the public market, these holders could cause the price of our common stock to fall. In addition, any demand to include such shares in our registration statements could have a material adverse effect on our ability to raise needed capital. For more information about these registration rights, see "Description of Capital Stock—Registration Rights."

Stock Options

As of September 30, 2010, under our 2005 Stock Plan, we had outstanding options to purchase shares of common stock.

As soon as practicable after completion of this offering, we intend to register the shares of our common stock subject to the options outstanding or reserved for issuance under this plan on a registration statement on Form S-8 under the Securities Act. Subject to the lock-up agreements and the restrictions imposed under the 2005 Stock Plan, shares of common stock issued pursuant to this plan after the effective date of the registration statement on Form S-8 will be available for sale in the public market without restriction to the extent that they are held by persons who are not our affiliates.

MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of our common stock by Non-U.S. Holders, but does not purport to be a complete analysis of all the potential tax considerations. For purposes of this summary, a "Non-U.S. Holder" means a beneficial owner of common stock that for U.S. federal income tax purposes is:

- a non-resident alien individual;
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized under the laws of a jurisdiction other than the U.S., any state thereof, or the District of Columbia;
- an estate, other than an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust, other than a trust (a) the administration of which is subject to the primary supervision of a court within the United States and which has one or more U.S. persons have the authority to control all substantial decisions of the trust, or (b) that has a valid election to be treated as a U.S. person.

If a partnership (or an entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner will generally depend upon the status of the partners and the activities of the partnership. Accordingly, we urge partnerships that hold our common stock and partners in such partnerships to consult their tax advisors.

This summary assumes that a Non-U.S. Holder will hold our common stock issued by this offering as a capital asset. This summary is general in nature and thus does not purport to deal with all aspects of U.S. federal income taxation that might be relevant to a particular Non-U.S. Holder in light of their particular investment circumstances or status, nor does it address specific tax considerations that may be relevant to particular persons (including, for example, financial institutions, broker-dealers, insurance companies, partnerships or other pass-through entities, regulated investment companies, real estate investment trusts, grantor trusts, certain U.S. expatriates, pension plans, tax-exempt organizations, "controlled foreign corporations," "passive foreign investment companies," corporations that accumulate earnings to avoid U.S. federal income tax, persons that receive shares of our common stock in connection with services provided, or persons in special situations, such as those who have elected to mark securities to market or those who hold common stock as part of a straddle, hedge, conversion transaction or other integrated investment). In addition, this summary does not address U.S. federal alternative minimum, estate and gift tax considerations (except to the extent discussed below) or considerations under the tax laws of any state, local or non-U.S. jurisdiction.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury regulations promulgated or proposed thereunder and administrative and judicial interpretations thereof, all as of the date hereof and all of which are subject to change at any time, possibly on a retroactive basis. Any change could alter the tax consequences to Non-U.S. Holders described in this prospectus. In addition, the Internal Revenue Service, or the IRS, could challenge one or more of the tax consequences described in this prospectus.

This summary is for general information only. Non-U.S. Holders are urged to consult their tax advisors concerning the U.S. federal, state, local and non-U.S. taxation and other tax consequences to them of the purchase, ownership and disposition of our common stock, as well as the application of U.S. federal, state, local and non-U.S. income and other tax laws.

Distributions

In the event that we do make a distribution of cash or property with respect to our common stock, any such distributions will be treated as a dividend for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Any distribution not treated as a dividend will be treated first as a tax-free return of capital to the extent of the Non-U.S. Holder's tax basis in our common stock and thereafter as capital gain from the sale or exchange of such stock as described in the next section. Dividends paid to a Non-U.S. Holder generally will be subject to a 30% U.S. federal withholding tax unless such Non-U.S. Holder provides us, or our agent, as the case may be, with a properly executed:

1. IRS Form W-8BEN (or successor form) claiming, under penalties of perjury, a reduction in withholding under an applicable income tax treaty, or

2. IRS Form W-8ECI (or successor form) stating that a dividend paid on common stock is not subject to withholding tax because it is effectively connected with a U.S. trade or business of the Non-U.S. Holder (in which case such dividend generally will be subject to regular graduated U.S. tax rates as described below).

The certification requirement described above also may require a Non-U.S. Holder to obtain a U.S. taxpayer identification number. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the Non-U.S. Holder's behalf, the Non-U.S. Holder will be required to provide appropriate documentation to such agent. The agent will then be required to provide certification to us, or our paying agent, as the case may be, either directly or through other intermediaries.

Each Non-U.S. Holder is urged to consult its own tax advisor about the specific methods for satisfying these requirements. A claim for exemption will not be valid if the person receiving the applicable form has actual knowledge or reason to know that the statements on the form are false.

If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal withholding tax pursuant to an income tax treaty, such holder may obtain a refund or credit of any excess amount withheld by timely filing an appropriate claim for refund with the IRS.

If dividends are effectively connected with a U.S. trade or business of the Non-U.S. Holder (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), the Non-U.S. Holder, although exempt from the withholding tax described above (provided that the certifications described above are satisfied), will be subject to U.S. federal income tax on such dividends on a net income basis in the same manner as if it were a resident of the United States. In addition, if such Non-U.S. Holder is a non-U.S. corporation and dividends are effectively connected with its U.S. trade or business (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment), such Non-U.S. Holder may be subject to an additional "branch profits tax" equal to 30% (unless reduced by an applicable income treaty) in respect of such effectively-connected income.

Taxable Disposition of Our Common Stock

A Non-U.S. Holder generally will not be subject to U.S. federal income tax on gain recognized on a sale, exchange or other taxable disposition of a share of our common stock, unless:

- the gain is effectively connected with a trade or business of the Non-U.S. Holder in the United States (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment);

- the Non-U.S. Holder is a nonresident alien who is present in the United States for 183 days or more in the taxable year of the disposition and meets certain other conditions; or

- we are or have been a "United States real property holding corporation," as defined in the Code (a "USRPHC"), at any time within the shorter of the five-year period preceding the disposition and the Non-U.S. Holder's holding period the share our common stock.

If a Non-U.S. Holder is engaged in a trade or business in the U.S. and gain recognized by the Non-U.S. Holder on a sale or other disposition of our common stock is effectively connected with the conduct of such trade or business, the Non-U.S. Holder will generally be subject to regular U.S. income tax as if the Non-U.S. Holder were a U.S. person, subject to an applicable income tax treaty providing otherwise. Additionally, a non-U.S. corporation may also, under certain circumstances, be subject to an additional "branch profits tax" imposed at a rate of 30% (or, if applicable, a lower income tax treaty rate). Non-U.S. Holders whose gain from dispositions of our common stock may be effectively connected with the conduct of a trade or business in the United States are urged to consult their own tax advisors with respect to the U.S. tax consequences of the purchase, ownership and disposition of our common stock.

A nonresident alien who is subject to U.S. federal income tax because such individual was present in the United States for 183 days or more in the taxable year of the taxable disposition of our common stock will be subject to a flat 30% tax on the gain derived from such disposition, which may be offset by U.S. source capital loss.

We believe that we are not, and do not anticipate becoming, a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property relative to the fair market value of other business assets, there can be no assurance that we will not become a USRPHC in the future. Even if we become a USRPHC, a Non-U.S. Holder would not be subject to U.S. federal income tax on a sale, exchange or other taxable disposition of our common stock so long as our common stock continues to be regularly traded on an established securities market and such Non-U.S. Holder does not own and is not deemed to own (directly, indirectly or constructively) more than 5% of our common stock at any time during the shorter of the five year period ending on the date of disposition and the holder's holding period. There can be no assurance that our common stock will qualify as regularly traded on an established market.

Information Reporting and Backup Withholding

Generally, we must report annually to the IRS and to each Non-U.S. Holder certain information including the Non-U.S. Holder's name, address and taxpayer identification number, the aggregate amount of distributions on our common stock paid to that Non-U.S. Holder during the calendar year and the amount of tax withheld, if any. Pursuant to tax treaties and certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Backup withholding tax is imposed on dividends and certain other types of payments to certain U.S. persons. Backup withholding tax will not apply to payments of dividends on common stock or proceeds from the sale of common stock payable to a Non-U.S. Holder if the certification described above in "Distributions" is duly provided by such Non-U.S. Holder or the Non-U.S. Holder otherwise establishes an exemption, provided that the payor does not have actual knowledge or reason to know that the Holder is a U.S. person or that the conditions of any claimed exemption are not satisfied. Certain information reporting may still apply to distributions even if an exemption from backup withholding is established.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding tax rules from a payment to a Non-U.S. Holder will be allowed as a refund or a credit against such Non-U.S. Holder's U.S. federal income tax liability, provided that the requisite procedures are followed.

Non-U.S. Holders are urged to consult their own tax advisors regarding their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding.

Recently enacted legislation affecting taxation of our common stock held by or through foreign entities

Recently enacted legislation generally will impose a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our common stock paid after December 31, 2012 to (a) a foreign financial institution unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners), or (b) a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding direct and indirect U.S. owners of the entity. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes. Holders are encouraged to consult with their own tax advisors regarding the possible implications of the legislation on their investment in our common stock.

U.S. Federal Estate Tax

Common stock owned or treated as owned by an individual who is a Non-U.S. Holder at the time of death generally will be included in the individual's gross estate for U.S. federal estate tax purposes and may be subject to U.S. federal estate tax unless an applicable estate tax treaty provides otherwise.

THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAW.

UNDERWRITING

Citigroup Global Markets Inc. and Barclays Capital Inc. are acting as joint book-running managers of the offering and as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus, each underwriter named below has severally agreed to purchase, and we have agreed to sell to that underwriter, the number of shares set forth opposite the underwriter's name.

Underwriter	Number of Shares
Citigroup Global Markets Inc.	
Barclays Capital Inc.	
Cowen and Company, LLC	
Stifel, Nicolaus & Company, Incorporated	
Total	

The underwriting agreement provides that the obligations of the underwriters to purchase the shares included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the shares (other than those covered by the over-allotment option described below) if they purchase any of the shares.

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount from the initial public offering price not to exceed $ per share. If all the shares are not sold at the initial offering price, the underwriters may change the offering price and the other selling terms. The representatives have advised us that the underwriters do not intend to make sales to discretionary accounts.

If the underwriters sell more shares than the total number set forth in the table above, we have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares at the public offering price less the underwriting discount. The underwriters may exercise the option solely for the purpose of covering over-allotments, if any, in connection with this offering. To the extent the option is exercised, each underwriter must purchase a number of additional shares approximately proportionate to that underwriter's initial purchase commitment. Any shares issued or sold under the option will be issued and sold on the same terms and conditions as the other shares that are the subject of this offering.

We, our officers and directors, and our other stockholders have agreed that, for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Citigroup Global Markets Inc. and Barclays Capital Inc., dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock. Citigroup Global Markets Inc. and Barclays Capital Inc. in their sole discretion may release any of the securities subject to these lock-up agreements at any time without notice. Notwithstanding the foregoing, if (i) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (ii) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day restricted period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Prior to this offering, there has been no public market for our shares. Consequently, the initial public offering price for the shares will be determined by negotiations between us and the representatives. Among the factors considered in determining the initial public offering price will be our results of operations, our current financial condition, our future prospects, our markets, the

economic conditions in and future prospects for the industry in which we compete, our management, and currently prevailing general conditions in the equity securities markets, including current market valuations of publicly traded companies considered comparable to our company. We cannot assure you, however, that the price at which the shares will sell in the public market after this offering will not be lower than the initial public offering price or that an active trading market in our shares will develop and continue after this offering.

We intend to apply to have our shares listed on the Nasdaq Global Market under the symbol "SUPN."

The following table shows the underwriting discounts and commissions that we are to pay to the underwriters in connection with this offering. These amounts are shown assuming both no exercise and full exercise of the underwriters' over-allotment option.

	Paid by Supernus Pharmaceuticals, Inc.	
	No Exercise	Full Exercise
Per share	$	$
Total	$	$

In connection with the offering, the underwriters may purchase and sell shares in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions, which may include purchases pursuant to the over-allotment option, and stabilizing purchases.

- Short sales involve secondary market sales by the underwriters of a greater number of shares than they are required to purchase in the offering.
    - "Covered" short sales are sales of shares in an amount up to the number of shares represented by the underwriters' over-allotment option.
    - "Naked" short sales are sales of shares in an amount in excess of the number of shares represented by the underwriters' over-allotment option.
- Covering transactions involve purchases of shares either pursuant to the over-allotment option or in the open market after the distribution has been completed in order to cover short positions.
    - To close a naked short position, the underwriters must purchase shares in the open market after the distribution has been completed. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
    - To close a covered short position, the underwriters must purchase shares in the open market after the distribution has been completed or must exercise the over-allotment option. In determining the source of shares to close the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.
- Stabilizing transactions involve bids to purchase shares so long as the stabilizing bids do not exceed a specified maximum.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the shares. They may also cause the price of the shares to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may

conduct these transactions on the Nasdaq Global Market, in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

Certain of the underwriters have performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses. The underwriters may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. Cowen Healthcare Royalty Partners (CHRP), an affiliate of Cowen and Company, LLC, holds certain of the Non-recourse Notes issued by our subsidiary, TCD Royalty Sub LLC.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

Notice to Prospective Investors in the European Economic Area

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of shares described in this prospectus may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the shares that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

- to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or
- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of shares described in this prospectus located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an "offer to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

The sellers of the shares have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the shares as contemplated in this prospectus. Accordingly, no

purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of the sellers or the underwriters.

Notice to Prospective Investors in the United Kingdom

This prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a "relevant person"). This prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in France

Neither this prospectus nor any other offering material relating to the shares described in this prospectus has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers.* The shares have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus nor any other offering material relating to the shares has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of the shares to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*;
- to investment services providers authorized to engage in portfolio management on behalf of third parties; or
- in a transaction that, in accordance with article L.411-2-II-1°-or-2°-or 3° of the French *Code monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The shares may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

Notice to Prospective Investors in Hong Kong

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the

contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Japan

The shares offered in this prospectus have not been registered under the Securities and Exchange Law of Japan. The shares have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

- a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

- to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;

- where no consideration is or will be given for the transfer; or

- where the transfer is by operation of law.

LEGAL MATTERS

Our counsel, Ropes & Gray LLP, Boston, Massachusetts, will pass on the validity of the shares of common stock offered by this prospectus. Goodwin Procter LLP, Boston, Massachusetts, has acted as counsel for the underwriters in connection with certain legal matters related to this offering.

EXPERTS

The consolidated financial statements of Supernus Pharmaceuticals, Inc. at December 31, 2009 and 2008, and for each of the three years in the period ended December 31, 2009, appearing in this prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

MARKET AND INDUSTRY DATA

Market data and certain industry data and forecasts included in this prospectus were obtained from internal company surveys, market research, consultant surveys, publicly available information and industry publications and surveys. While we believe that each of these studies and publications is reliable, we have not independently verified market and industry data from third-party sources. While we believe our internal company research is reliable and the market definitions we use are appropriate, neither such research nor these definitions have been verified by any independent source. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors."

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the Securities and Exchange Commission, or SEC, a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and the exhibits filed as part of the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The reports and other information we file with the SEC can be read and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington D.C. 20549. Copies of these materials can be obtained at prescribed rates from the SEC's Public Reference Room at such address. You may obtain information regarding the operation of the public reference room by calling 1-800-SEC-0330. The SEC also maintains a web site (http://www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

Upon completion of this offering, we will become subject to the reporting and information requirements of the Exchange Act and, as a result, will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room and the web site of the SEC referred to above.

Supernus Pharmaceuticals, Inc.

Index to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

The Board of Directors
Supernus Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Supernus Pharmaceuticals, Inc. as of December 31, 2008 and 2009, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Supernus Pharmaceuticals, Inc. and subsidiaries as of December 31, 2008 and 2009, and the consolidated results of their operations and their cash flows for the three years in the period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

McLean, Virginia
April 28, 2010

Supernus Pharmaceuticals, Inc.

Consolidated Balance Sheets

	December 31, 2008	December 31, 2009	September 30, 2010 (unaudited)	Pro Forma Stockholders' Deficit at September 30, 2010 (unaudited)
Assets				
Current assets:				
Cash and cash equivalents	$ 52,876,864	$ 31,405,680	$ 25,255,918	
Cash and cash equivalents—restricted	6,110,718	1,850,912	1,442,101	
Marketable securities	7,502,636	35,118,047	20,566,385	
Marketable securities—restricted	169,621	224,861	237,656	
Accounts receivable	2,276,420	3,407,770	3,033,067	
Interest receivable	—	334,417	85,802	
Prepaid expenses	252,511	266,924	351,086	
Deferred financing costs	268,560	270,934	270,934	
Total current assets	69,457,330	72,879,545	51,242,949	
Property and equipment, net	1,987,578	1,859,186	1,469,005	
Purchased patents, net	1,599,950	1,370,725	1,198,806	
Other assets	108,822	82,150	63,845	
Deferred financing costs, long-term	3,980,073	3,707,375	3,527,616	
Total assets	$ 77,133,753	$ 79,898,981	$ 57,502,221	
Liabilities and stockholders' deficit				
Current liabilities:				
Accounts payable and accrued expenses	$ 4,468,426	$ 6,244,516	$ 14,092,113	
Accrued compensation	1,305,572	1,287,620	815,598	
Interest payable	2,500,000	2,500,000	2,500,000	
Total current liabilities	8,273,998	10,032,136	17,407,711	
Deferred rent	437,439	797,145	773,664	
Supplemental executive retirement plan	169,621	224,861	237,656	
Non-recourse notes payable	75,000,000	75,000,000	75,000,000	
Total liabilities	83,881,058	86,054,142	93,419,031	
Stockholders' deficit:				
Series A convertible preferred stock, $0.001 par value—49,000,000 shares authorized, issued and outstanding at December 31, 2008 and 2009 and September 30, 2010; aggregate liquidation preference of $59,230,260, $62,660,260 and $65,232,760 at December 31, 2008, 2009, and September 30, 2010, respectively	49,000	49,000	49,000	—
Common stock, $0.001 par value—62,000,000 shares authorized, 5,520,591 and 6,336,061 shares issued and outstanding at December 31, 2008 and 2009, respecively and 6,371,061 shares issued and outstanding at September 30, 2010	5,521	6,337	6,372	55,372
Additional paid-in capital	48,980,411	49,110,087	49,237,544	49,237,544
Accumulated deficit	(55,782,237)	(55,320,585)	(85,209,726)	(85,209,726)
Total stockholders' deficit	(6,747,305)	(6,155,161)	(35,916,810)	(35,916,810)
Total liabilities and stockholders' deficit	$ 77,133,753	$ 79,898,981	$ 57,502,221	

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Operations

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
Revenues:					
Development and milestone revenue	$ 1,405,098	$ 2,697,048	$ 1,549,886	$ 1,181,058	$ 97,174
Royalty revenue	2,828,313	6,191,616	44,963,260	41,883,532	8,634,848
Total revenues	4,233,411	8,888,664	46,513,146	43,064,590	8,732,022
Costs and expenses:					
Research and development	19,268,757	30,462,808	29,260,067	21,804,118	26,079,702
General and administrative	4,011,693	4,286,501	4,648,906	3,502,539	3,388,768
Total costs and expenses	23,280,450	34,749,309	33,908,973	25,306,657	29,468,470
Income (loss) from operations	(19,047,039)	(25,860,645)	12,604,173	17,757,933	(20,736,448)
Other income (expense):					
Interest income	1,772,999	1,057,462	514,327	100,640	622,854
Interest expense	—	(8,678,508)	(12,658,262)	(9,209,699)	(9,830,537)
Other	—	—	—	—	53,576
Total other income (expense)	1,772,999	(7,621,046)	(12,143,935)	(9,109,059)	(9,154,107)
Net income (loss)	$(17,274,040)	$(33,481,691)	$ 460,238	$ 8,648,874	$(29,890,555)
Cumulative dividends on preferred Series A convertible preferred stock	$ (3,430,000)	$ (3,430,000)	$ (3,430,000)	$ (2,572,500)	$ (2,572,500)
Net income (loss) attributable to common stockholders	$(20,704,040)	$(36,911,691)	$ (2,969,762)	$ 6,076,374	$(32,463,055)
Net income (loss) per common share:					
Basic	$ (4.21)	$ (6.61)	$ (0.53)	$ 1.08	$ (5.12)
Diluted	$ (4.21)	$ (6.61)	$ 0.01	$ 0.15	$ (5.12)
Weighted average number of common shares:					
Basic	4,921,376	5,587,467	5,653,506	5,610,047	6,345,420
Diluted	4,921,376	5,587,467	56,324,761	56,282,411	6,345,420
Net income (loss) used to compute pro forma net income (loss) per common share — basic and diluted (unaudited)(Note 2)			$ 460,238		$(29,890,555)
Weighted-average number of shares used in calculating pro forma net income (loss) per share basic and diluted (unaudited)(Note 2)			56,324,761		55,345,420
Pro forma net income (loss) per share—basic and diluted (unaudited)(Note 2)			$ 0.01		$ (0.54)

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Changes in Stockholders' Equity (Deficit)

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balance, December 31, 2006	49,000,000	$ 49,000	4,235,303	$ 4,235	$48,803,670	$ (5,026,506)	$ 43,830,399
Vesting of unvested stock issued to officer	—	—	617,644	618	61,146	—	61,764
Exercise of stock options	—	—	50,000	50	4,950	—	5,000
Stock-based compensation	—	—	—	—	12,336	—	12,336
Net loss	—	—	—	—	—	(17,274,040)	(17,274,040)
Balance, December 31, 2007	49,000,000	49,000	4,902,947	4,903	48,882,102	(22,300,546)	26,635,459
Vesting of unvested stock issued to officer	—	—	617,644	618	61,146	—	61,764
Stock-based compensation	—	—	—	—	37,163	—	37,163
Net loss	—	—	—	—	—	(33,481,691)	(33,481,691)
Balance, December 31, 2008	49,000,000	49,000	5,520,591	5,521	48,980,411	(55,782,237)	(6,747,305)
Vesting of unvested stock issued to officer	—	—	617,644	618	61,146	—	61,764
Exercise of stock options	—	—	197,826	198	19,585	—	19,783
Stock-based compensation	—	—	—	—	48,945	—	48,945
Net income	—	—	—	—	—	460,238	460,238
Other comprehensive income	—	—	—	—	—	1,414	1,414
Balance, December 31, 2009	49,000,000	49,000	6,336,061	6,337	49,110,087	(55,320,585)	(6,155,161)
Exercise of stock options (unaudited)	—	—	35,000	35	3,465	—	3,500
Stock-based compensation (unaudited)	—	—	—	—	123,992	—	123,992
Net loss (unaudited)	—	—	—	—	—	(29,890,555)	(29,890,555)
Other comprehensive income (unaudited)	—	—	—	—	—	1,414	1,414
Balance, September 30, 2010 (unaudited)	49,000,000	$ 49,000	6,371,061	$ 6,372	$49,237,544	$(85,209,726)	$(35,916,810)

See accompanying notes

Supernus Pharmaceuticals, Inc.

Consolidated Statements of Cash Flows

	Year Ended December 31,			Nine Months Ended September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
Operating activities					
Net income (loss)	$(17,274,040)	$ (33,481,691)	$ 460,238	$ 8,648,874	$(29,890,555)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Other	—	—	—	—	(53,576)
Unrealized gain (loss) on marketable securities	—	—	1,414	(2,778)	1,414
Depreciation and amortization	932,211	1,115,853	1,072,102	789,597	889,648
Amortization of deferred financing costs	—	178,508	270,324	202,742	179,759
Stock-based compensation expense	74,100	98,927	110,709	83,031	123,992
Changes in operating assets and liabilities:					
Accounts receivable	(413,853)	(1,163,482)	(1,131,350)	857,110	374,703
Interest receivable	—	—	(334,417)	(314,296)	248,615
Notes receivable from employee	(63,250)	63,250	—	—	—
Prepaid expenses and other assets	88,602	(72,217)	12,259	(183,741)	(65,858)
Accounts payable, accrued expenses, and supplemental executive retirement plan	2,448,174	1,088,129	1,813,378	1,505,631	7,375,575
Interest payable	—	2,500,000	—	—	—
Deferred rent	227,638	21,157	359,706	408,054	(23,481)
Net cash provided by (used in) operating activities	(13,980,418)	(29,651,566)	2,634,363	11,994,224	(20,839,764)
Cash flows from investing activities					
Purchases of marketable securities	(48,380,712)	(89,513,351)	(56,288,673)	(26,616,159)	45,297,692
Sales and maturities of marketable securities	64,297,060	105,128,173	28,618,022	7,510,559	(30,746,029)
Other	—	—	—	—	55,000
Purchases of property and equipment	(1,062,374)	(134,381)	(714,485)	(512,441)	(328,972)
Net cash provided by (used in) investing activities	14,853,974	15,480,441	(28,385,136)	(19,618,041)	14,277,691
Cash flows from financing activities					
Change in restricted cash and cash equivalents	—	(6,110,718)	4,259,806	2,526,002	408,811
Proceeds from issuance of common stock	5,000	—	19,783	19,383	3,500
Proceeds from issuance of note payable	—	75,000,000	—	—	—
Deferred financing costs	—	(4,427,141)	—	—	—
Net cash provided by financing activities	5,000	64,462,141	4,279,589	2,545,385	412,311
Net change in cash and cash equivalents	878,556	50,291,016	(21,471,184)	(5,078,432)	(6,149,762)
Cash and cash equivalents at beginning of period	1,707,292	2,585,848	52,876,864	52,876,864	31,405,680
Cash and cash equivalents at end of period	$ 2,585,848	$ 52,876,864	$ 31,405,680	$ 47,798,431	$ 25,255,918
Supplemental cash flow information:					
Cash paid for interest	$ —	$ 6,000,000	$ 12,000,000	$ 9,000,000	$ 9,090,378

See accompanying notes.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

1. Organization and Nature of Operations

Supernus Pharmaceuticals, Inc. (the Company) was incorporated in Delaware on March 30, 2005, and commenced operations on December 22, 2005. The Company is a specialty pharmaceutical company focused on developing and commercializing products for the treatment of central nervous system diseases, including neurological and psychiatric disorders. The Company has several proprietary product candidates in clinical development that address large market opportunities in epilepsy and attention deficit hyperactivity disorder.

The Company is currently focused on attaining regulatory approval and bringing its two late-stage epilepsy product candidates, SPN-538 and Epliga, to market. Except for a one time profit in 2009, the Company has incurred net losses from operations since its inception. The Company had net income of approximately $0.5 million during the year ended December 31, 2009 and a net loss of $29.9 million during the nine months ended September 30, 2010. The Company has financed its operations primarily through the sale of equity securities, non-recourse debt arrangements, and payments received under its royalty and development agreements. To date, none of the Company's product candidates have been approved for sale and therefore the Company has not generated any revenues from product sales. Management expects operating losses to continue for the foreseeable future. The Company may need to obtain additional capital through equity offerings, debt financings and/or payments under new or existing licensing and research and development collaboration agreements. The Company expects its progress in the development of its pipeline to provide sufficient value inflection milestones, based on which the Company can continue to seek additional funding. The type, timing, and terms of financing, if required, selected by the Company will be dependent upon the Company's cash needs, the availability of financing sources, and the prevailing conditions in the financial markets. There can be no assurance that such financing will be available to the Company at any given time or available on favorable terms. If sufficient funds on acceptable terms are not available when needed, the Company could be required to significantly reduce operating expenses and delay, reduce the scope of, or eliminate one or more of its development programs, which may have a material adverse effect on the Company's business, results of operations and financial condition.

The Company's operations are subject to certain risks and uncertainties. The risks include negative outcome of clinical trials, inability or delay in completing clinical trials or obtaining regulatory approvals, changing market conditions for products being developed by the Company, more stringent regulatory environment, the need to retain key personnel and protect intellectual property, product liability, and the availability of additional capital financing on terms acceptable to the Company.

2. Summary of Significant Accounting Policies

Basis of Presentation

The Company's consolidated financial statements include the accounts of Supernus Pharmaceuticals, Inc. and its wholly-owned subsidiary, TCD Royalty Sub LLC, collectively referred to herein as "Supernus" or "the Company". All significant intercompany transactions and balances have been eliminated in consolidation. The Company's consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States. The Company currently operates in one business segment.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Use of Estimates

The preparation of the financial statements in accordance with U.S. generally accepted accounting principles requires the Company to make estimates and judgments in certain circumstances that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. In preparing these consolidated financial statements, management has made its best estimates and judgments of certain amounts included in the financial statements, giving due consideration to materiality. On an ongoing basis, the Company evaluates its estimates, including those related to revenue recognition, fair values of assets, convertible preferred stock and common stock, income taxes, preclinical study and clinical trial accruals and other contingencies. Management bases its estimates on historical experience or on various other assumptions that it believes to be reasonable under the circumstances. Actual results could differ from these estimates.

Unaudited Interim Financial Information

The accompanying unaudited interim consolidated balance sheet as of September 30, 2010, the consolidated statements of operations and cash flows for the nine months ended September 30, 2010 and 2009, the consolidated statement of changes in stockholders' equity (deficit) for the nine months ended September 30, 2010, and the related interim information contained within the notes to the consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (SEC) for interim financial information. Accordingly, they do not include all of the information and the notes required by U.S. generally accepted accounting principles for complete financial statements. In the opinion of management, the unaudited interim consolidated financial statements reflect all adjustments, consisting of normal and recurring adjustments, necessary for the fair presentation of the Company's financial position at September 30, 2010 and results of its operations and its cash flows for the nine months ended September 30, 2010 and 2009. The results for the nine months ended September 30, 2010 are not necessarily indicative of future results. All references to September 30, 2010 or to the nine months ended September 30, 2010 and 2009 in the notes to the consolidated financial statements are unaudited.

Unaudited Pro Forma Balance Sheet Presentation

The unaudited pro forma balance sheet as of September 30, 2010, reflects the expected automatic conversion of the outstanding shares of Series A convertible preferred stock into 49,000,000 shares of common stock as though the completion of the Company's initial public offering (IPO) had occurred on September 30, 2010. The shares of common stock issued in the IPO and any related estimated net proceeds are excluded from such pro forma information.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, TCD Royalty Sub LLC (TCD). TCD was formed for the purpose of issuing non-recourse notes payable secured by certain royalty payment and license rights (see Note 6). All intercompany balances and transactions have been eliminated in consolidation.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Cash and Cash Equivalents and Restricted Cash

The Company considers all investments in highly liquid financial instruments with an original maturity of three months or less to be cash equivalents.

Under the terms of a non-recourse note agreement, TCD is required to maintain a cash account to cover interest payments (see Note 6). These cash and cash equivalents are restricted as to their withdrawal or use and, therefore, are segregated and presented as restricted cash and cash equivalents.

Marketable Securities

Marketable securities consist of investments in U.S. Treasuries and various government agency debt securities, which mature in one year or less. At December 31, 2008, the Company held approximately $7.5 million of auction rate securities which were sold at par value on January 2, 2009. Management classifies the Company's short-term investments as available-for-sale. Such securities are carried at estimated fair value, with any material unrealized holding gains or losses reported, net of any tax effects, as accumulated other comprehensive income (loss), which is a separate component of stockholders' equity (deficit). Realized gains and losses and declines in value judged to be other-than-temporary, if any, are included in results of operations. A decline in the market value of any available-for-sale security below cost that is deemed to be other-than-temporary results in a reduction in fair value, which is charged to earnings in that period, and a new cost basis for the security is established. Dividend and interest income is recognized as interest income when earned. The cost of securities sold is calculated using the specific identification method. The Company places all investments with highly rated financial institutions.

Marketable Securities—Restricted

On January 21, 2006, the Company established the Supernus Supplemental Executive Retirement Plan (SERP) for the sole purpose of receiving funds for two executives from the Shire Laboratories, Inc. SERP and providing a continuing deferral program under the Supernus SERP. As of December 31, 2008 and 2009, the estimated fair value of the mutual fund investment securities within the SERP have been recorded as restricted marketable securities. A corresponding non-current liability is also included in the consolidated balance sheet to reflect the Company's obligation for the SERP. The Company has not made, and has no plans to make, contributions to the SERP. The securities can only be used for purposes of paying benefits under the SERP.

Accounts Receivable

Accounts receivable are reported in the balance sheets at outstanding amounts, less an allowance for doubtful accounts. The Company extends credit without requiring collateral. The Company writes off uncollectible receivables when the likelihood of collection is remote. The Company evaluates the collectability of accounts receivable on a regular basis. An allowance, when needed, is based upon various factors including the financial condition and payment history of customers, an overall review of

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

collections experience on other accounts, and economic factors or events expected to affect future collections experience. No allowance was recorded as of December 31, 2008 and 2009.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash, accounts receivable and marketable securities. The counterparties are various corporations and financial institutions of high credit standing.

Substantially all of the Company's cash and cash equivalents are maintained with major financial institutions in the United States. Deposits held with banks may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and, therefore, management believes they bear minimal risk. The Company has not experienced any losses on its deposits of cash, cash equivalents, short-term investments and restricted investments and management believes that its guidelines for investment of its excess cash maintain safety and liquidity through diversification and investment maturity.

Fair Value of Financial Instruments

The carrying amounts of financial instruments, including cash and cash equivalents, accounts receivable, and accounts payable and accrued expenses approximate fair value due to their short-term maturities. The carrying value and the estimated fair value of the non-recourse notes payable, was approximately $75.0 million and $66.0 million, respectively, at December 31 2008, December 31, 2009, and September 30, 2010. The fair value was estimated based on actual trade information as well as quoted prices provided by bond traders.

The fair value of an asset or liability should represent the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. Such transactions to sell an asset or transfer a liability are assumed to occur in the principal or most advantageous market for the asset or liability. Accordingly, fair value is determined based on a hypothetical transaction at the measurement date, considered from the perspective of a market participant rather than from a reporting entity's perspective.

The Company defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. The Company reports assets and liabilities that are measured at fair value using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

- Level 1—Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

- Level 2—Inputs are quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.) and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

- Level 3—Unobservable inputs that reflect the Company's own assumptions, based on the best information available, including the Company's own data.

In accordance with the fair value hierarchy described above, the following tables show the fair value of the Company's financial assets and liabilities that are required to be measured at fair value:

		Fair Value Measurements at December 31, 2008		
	Total Carrying Value at December 31, 2008	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and cash equivalents	$ 52,876,864	$ 52,876,864	$ —	$ —
Cash equivalents—restricted	6,110,718	6,110,718	—	—
Marketable securities	7,502,636		7,502,636	
Marketable securities—restricted	169,621	—	169,621	—
Total assets at fair value	$ 66,659,839	$ 58,987,582	$ 7,672,257	$ —

		Fair Value Measurements at December 31, 2009		
	Total Carrying Value at December 31, 2009	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and cash equivalents	$ 31,405,680	$ 31,405,680	$ —	$ —
Cash equivalents—restricted	1,850,912	1,850,912	—	—
Marketable securities	35,118,047	35,118,047	—	—
Marketable securities—restricted	224,861	—	224,861	—
Total assets at fair value	$ 68,599,500	$ 68,374,639	$ 224,861	$ —

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

		Fair Value Measurements at September 30, 2010		
	Total Carrying Value at September 30, 2010	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash and cash equivalents	$ 25,255,918	$ 25,255,918	$ —	$ —
Cash equivalents—restricted	1,442,101	1,442,101	—	—
Marketable securities	20,566,385	20,566,385	—	—
Marketable securities—restricted	237,656	—	237,656	—
Total assets at fair value	$ 47,502,060	$ 47,264,404	$ 237,656	$ —

The Company's Level 1 assets include money market funds and U.S. Treasuries and government agency debt securities with quoted prices in active markets. At December 31, 2008, Level 2 assets include auction rate securities and mutual funds the SERP assets are invested in. At December 31, 2009 and September 30, 2010, Level 2 assets include mutual funds the SERP assets are invested in. Mutual funds and auction rate securities are valued using third-party pricing sources that apply applicable inputs and other relevant data into their models to estimate fair value.

Property and Equipment

Property and equipment are stated at cost. Upon retirement or sale, the cost of assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is credited or charged to operations. Repairs and maintenance costs are expensed as incurred. Depreciation and amortization are computed using the straight-line method over the following average useful lives:

Computer equipment	3 years
Software	3 years
Furniture	7 years
Lab and office equipment	5 years
Leasehold improvements	Shorter of lease term or useful life

Intangible Assets

Intangible assets consist primarily of patents. Patents are carried at cost less accumulated amortization which is calculated on a straight-line basis over the estimated useful lives of the patents, estimated to be 10 years. The carrying value of the patents is assessed for impairment annually during the fourth quarter of each year, or more frequently if impairment indicators exist.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

Impairment of Long-Lived Assets

Long-lived assets consist primarily of patents and property and equipment. The Company assesses the recoverability of its long-lived assets whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If indications of impairment exist, projected future undiscounted cash flows associated with the asset are compared to the carrying amount to determine whether the asset's value is recoverable. Evaluating for impairment requires judgment, including the estimation of future cash flows, future growth rates and profitability and the expected life over which cash flows will occur. Changes in the Company's business strategy or adverse changes in market conditions could impact impairment analyses and require the recognition of an impairment charge equal to the excess of the carrying value of the intangible asset over its estimated fair value. For the years ended December 31, 2007, 2008 and 2009, the Company determined that there was no impairment of the Company's intangible assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value, less costs to sell. As of December 31, 2008 and 2009, and September 30, 2010, the Company determined that there were no impaired assets and had no assets intended for disposal.

Preclinical Study and Clinical Trial Accruals and Deferred Advance Payments

The Company estimates preclinical study and clinical trial expenses based on the services performed pursuant to contracts with research institutions and clinical research organizations that conduct these activities on its behalf. In recording service fees, the Company estimates the time period over which the related services will be performed and compares the level of effort expended through the end of each period to the cumulative expenses recorded and payments made for such services and, as appropriate, accrues additional service fees or defers any non-refundable advance payments until the related services are performed. If the actual timing of the performance of services or the level of effort varies from the estimate, the Company will adjust its accrual or deferred advance payment accordingly. If the Company later determines that it no longer expects the services associated with a deferred non-refundable advance payment to be rendered, the deferred advance payment will be charged to expense in the period that such determination is made.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax reporting bases of assets and liabilities and are measured using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

The Company accounts for uncertain tax positions in the financial statements when it is more likely than not that the position will be sustained upon examination by the tax authorities. Such tax positions must initially and subsequently be measured as the largest amount of tax benefit that has a greater than 50% likelihood of being realized upon ultimate settlement with the tax authority assuming full knowledge of the position and relevant facts. The adoption had no impact on the Company's

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

results of operations, financial position or cash flows. The Company's policy is to recognize any interest and penalties related to income taxes in income tax expense.

Revenues

The Company's revenues have been generated through research and development agreements. These agreements included fees for development services provided to customers and payments for achievement of specified development, regulatory and sales milestones, which comprise our development and milestone revenues, as well as royalties on product sales of licensed products, Oracea®, SancturaXR®, and Intuniv®, which comprise our royalty revenues. For multiple element arrangements, the Company evaluates the components of each arrangement as separate elements based on certain criteria. Accordingly, revenues from collaboration agreements are recognized based on the performance requirements of the agreements. The Company recognizes revenue when persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the fee is fixed and determinable; and collection is reasonably assured.

The Company recognizes development revenue as the related costs are incurred. Milestone payments are recognized as revenue when the collaborative partner acknowledges completion of the milestone and substantive effort was necessary to achieve the milestone.

The Company records royalty revenues based on estimates of the sales that occurred during the relevant period. The relevant period estimates of sales are based on interim data provided by licensees and analysis of historical royalties received (adjusted for any changes in facts and circumstances, as appropriate). Supernus maintains regular communication with licensees in order to obtain information to develop reasonable estimates. Differences between actual royalty revenues and estimated royalty revenues are reconciled and adjusted for in the period which they are collected, typically the following quarter. Historically, adjustments have not been material based on actual amounts received from licensees. To the extent the Company does not have sufficient ability to accurately estimate revenue, it records revenue on a cash basis.

Research and Development Costs

Research and development expenditures are expensed as incurred. Research and development costs primarily consist of employee related expenses, including salaries and benefits, expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct the Company's clinical trials, the cost of acquiring and manufacturing clinical trial materials, facilities that do not have an alternative future use, related depreciation and other allocated expenses, license fees for and milestone payments related to in-licensed products and technologies, stock-based compensation expense, and costs associated with non-clinical activities and regulatory approvals.

Stock-Based Compensation

Employee stock-based compensation is measured based on the estimated fair value on the grant date. The grant date fair value of options granted is calculated using the Black-Scholes option-pricing model, which requires the use of subjective assumptions including volatility, expected term, and the fair

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

value of the underlying common stock. For awards that vest based on service conditions, the Company recognizes expense using the straight-line method less estimated forfeitures.

The Company has awarded non-vested stock. The estimated fair value of these awards is determined at the date of grant based upon the estimated fair value of the Company's common stock. The Company recognizes the estimated fair value on a straight-line basis over the requisite service period as the awards vest.

The Company records the expense for stock option grants and non-vested stock subject to performance-based milestone vesting over the remaining service period when management determines that achievement of the milestone is probable. Management evaluates when the achievement of a performance-based milestone is probable based on the relative satisfaction of the performance conditions as of the applicable reporting date.

The Company records the expense of services rendered by non-employees based on the estimated fair value of the stock option using the Black-Scholes option-pricing model. The fair value of non-employee awards are remeasured at each reporting period. As a result, stock compensation expense for non-employee awards with vesting is affected by changes in the fair value of the Company's common stock.

Net Earnings (Loss) Per Share

Basic net income (loss) per common share is determined by dividing the net income (loss) attributable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration of common stock equivalents. Diluted net income (loss) per share is computed by dividing the net income (loss) attributable to common stockholders by the weighted-average number of common share equivalents outstanding for the period. The treasury stock method is used to determine the dilutive effect of the Company's stock option grants and the if-converted method is used to determine the dilutive effect of the Company's Series A convertible preferred stock. With the exception of the year ended December 31, 2009 and the nine month period ended September 30, 2009, the weighted-average shares used to calculate both basic and diluted loss per share are the same. The following common stock equivalents were excluded in the calculation of diluted net income (loss) per share because their effect would be anti-dilutive:

	December 31,			September 30,	
	2007	2008	2009	2009	2010
Series A convertible preferred stock	49,000,000	49,000,000	—	—	49,000,000
Stock options and non-vested stock	2,382,389	2,183,152	—	—	1,791,290

The pro forma net income (loss) per share is computed using the weighted-average number of common shares outstanding and assumes the conversion of all outstanding shares of the Company's Series A convertible preferred stock into an aggregate of 49,000,000 shares of common stock upon completion of the Company's planned IPO, as if they had converted at the beginning of the period. The Company believes the unaudited pro forma net income (loss) per share provides material information to investors, as the conversion of the Company's Series A convertible preferred stock to

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

common stock is expected to occur upon the closing of an IPO, and the disclosure of pro forma net income (loss) per share thus provides an indication of net income (loss) per share that is comparable to what will be reported by the Company as a public company.

	December 31, 2009	September 30, 2010 (unaudited)
Pro forma net income (loss) per common share		
Numerator:		
Net income (loss) used to compute pro forma net income (loss) per common share:		
Basic	$ 460,238	$ (29,890,555)
Diluted	$ 460,238	$ (29,890,555)
Denominator:		
Weighted-average number of common shares, used to calculate net income (loss) per common share:		
Basic	5,653,506	6,345,420
Diluted	*56,324,761	6,345,420
Add: Pro forma adjustments to reflect assumed weighted-average effect of conversion of Series A convertible preferred stock	49,000,000	49,000,000
Weighted-average number of common shares used in calculating pro forma net income (loss) per common share:		
Basic	56,324,761	55,345,420
Diluted	56,324,761	55,345,420
Pro forma net income (loss) per common share:		
Basic	$ 0.01	$ (0.54)
Diluted	$ 0.01	$ (0.54)

* The weighted-average number of common shares used to calculate diluted income (loss) per share at December 31, 2009 includes the following common stock equivalents, which were not included in the calculation of basic net income (loss) per share because their effect would be anti-dilutive:

Series A convertible preferred stock	49,000,000
Stock options and non-vested stock	1,671,255

Recently Issued Accounting Pronouncements

In April 2010, the FASB issued ASU No. 2010-17, *Revenue Recognition—Milestone Method* (ASU 2010-017). ASU 2010-017 provides guidance in applying the milestone method of revenue recognition to research or development arrangements. This guidance concludes that the milestone method is a valid application of the proportional performance model when applied to research or development arrangements. Accordingly, an entity can make an accounting policy election to recognize a payment that is contingent upon the achievement of a substantive milestone in its entirety in the period in which the milestone is achieved. The guidance is effective for fiscal years, and interim periods within those years, beginning on or after June 15, 2010. The adoption of this accounting standard is not expected to impact the Company's financial position or results of operations.

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Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

2. Summary of Significant Accounting Policies (Continued)

In February 2010, the FASB issued amended guidance on subsequent events. Under this amended guidance, SEC filers are no longer required to disclose the date through which subsequent events have been evaluated in originally issued and revised financial statements. This guidance was effective immediately and the Company adopted these new requirements upon issuance of this guidance.

In January 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-06, *Fair Value Measurements and Disclosures (Topic 820)—Improving Disclosures about Fair Value Measurements* (ASU No. 2010-06). ASU No. 2010-06 requires: (1) fair value disclosures of assets and liabilities by class; (2) disclosures about significant transfers in and out of Levels 1 and 2 on the fair value hierarchy, in addition to Level 3; (3) purchases, sales, issuances, and settlements be disclosed on gross basis on the reconciliation of beginning and ending balances of Level 3 assets and liabilities; and (4) disclosures about valuation methods and inputs used to measure the fair value of Level 2 assets and liabilities. ASU No. 2010-06 becomes effective for the first financial reporting period beginning after December 15, 2009, except for disclosures about purchases, sales, issuances, and settlements of Level 3 assets and liabilities which will be effective for fiscal years beginning after December 15, 2010. The Company is currently assessing what impact, if any, ASU No. 2010-06 will have on its fair value disclosures. However, the Company does not expect the adoption of the guidance provided in this codification update to have any material impact on its consolidated financial statements.

In October 2009, the FASB issued ASU No. 2009-13, *Revenue Recognition (Topic 605)—Multiple-Deliverable Revenue Arrangements: a consensus of the FASB Emerging Issues Task Force* (ASU 2009-13). ASU 2009-13 establishes a selling-price hierarchy for determining the selling price of each element within a multiple-deliverable arrangement. Specifically, the selling price assigned to each deliverable is to be based on vendor-specific objective evidence (VSOE) if available, third-party evidence, if VSOE is unavailable, and estimated selling prices if neither VSOE or third-party evidence is available. In addition, ASU 2009-13 eliminates the residual method of allocating arrangement consideration and instead requires allocation using the relative selling price method. ASU 2009-13 will be effective prospectively for multiple-deliverable revenue arrangements entered into, or materially modified, in fiscal years beginning on or after June 15, 2010. Presently, the Company is assessing what impact, if any, the adoption of ASU 2009-13 may have on its consolidated financial statements.

In August 2009, the FASB issued ASU No. 2009-05, *Fair Value Measurements and Disclosures (Topic 820)—Measuring Liabilities at Fair Value* (ASU 2009-05). ASU 2009-05 provides guidance in measuring the fair value of a liability when a quoted price in an active market does not exist for an identical liability or when a liability is subject to restrictions on its transfer. ASU 2009-15 was effective for the Company beginning with the quarter ended December 31, 2009. The adoption of ASU 2009-05 had no impact on the fair value measurements of the Company's liabilities.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

3. Marketable Securities

Marketable securities held by the Company were as follows:

At December 31, 2008:

Available-for-Sale	Amortized Cost	Unrealized Gains/(Losses)	Fair Value
Auction rate securities	$ 7,502,636	$ —	$ 7,502,636
Mutual funds for SERP	169,621	—	169,621
	$ 7,672,257	$ —	$ 7,672,257

At December 31, 2009:

Available-for-Sale	Amortized Cost	Unrealized Gains/(Losses)	Fair Value
U.S. Treasuries and agencies	$ 35,116,363	$ 1,414	$ 35,118,047
Mutual funds for SERP	224,861	—	224,861
	$ 35,341,224	$ 1,414	$ 35,342,908

At September 30, 2010:

Available-for-Sale	Amortized Cost	Unrealized Gains/(Losses)	Fair Value
U.S. Treasuries and agencies	$ 20,564,971	$ 1,414	$ 20,566,385
Mutual funds for SERP	237,656		237,656
	$ 20,802,627	$ 1,414	$ 20,804,041

Gross realized gains (losses) that were included in earnings as a result of sales of securities are $0, $(10,265) and $0 for the years ended December 31, 2007, 2008, and 2009, and $0 for each of the nine-month periods ended September 30, 2009 and 2010, respectively.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

4. Property and Equipment

Property and equipment consists of the following:

	December 31, 2008	December 31, 2009	September 30, 2010 (unaudited)
Computer equipment	$ 511,483	$ 531,757	$ 548,060
Software	148,305	174,078	174,078
Lab equipment and furniture	3,149,977	3,327,632	3,471,465
Leasehold improvements	324,377	815,160	973,314
	4,134,142	4,848,627	5,166,917
Less accumulated depreciation and amortization	(2,146,564)	(2,989,441)	(3,697,912)
	$ 1,987,578	$ 1,859,186	$ 1,469,005

Depreciation expense on property and equipment for the years ended December 31, 2007, 2008 and 2009 was $702,985, $886,629 and $842,877, respectively, and $789,597 and $889,648 for the nine months ended September 30, 2009 and 2010, respectively.

5. Purchased Patents

In connection with a purchase agreement with Shire Laboratories, Inc., the Company acquired certain patents in 2005. The following sets forth the gross carrying amount and related accumulated amortization of the patents:

	Weighted-Average Life	December 31, 2008 Gross Carrying Amount	December 31, 2008 Accumulated Amortization	December 31, 2009 Gross Carrying Amount	December 31, 2009 Accumulated Amortization	September 30, 2010 Gross Carrying Amount	September 30, 2010 Accumulated Amortization
						(unaudited)	
Purchased patents	10.0	$ 2,292,253	$ 692,303	$ 2,292,253	$ 921,528	$ 2,292,253	$ 1,093,447

Amortization expense for the years ended December 31, 2007, 2008 and 2009 was $229,225 each year as is the estimated annual aggregate amortization expense through December 31, 2015. The net book value of intangible assets as of December 31, 2008 and 2009 and September 30, 2010 was approximately $1.6 million, $1.4 million and $1.2 million, respectively.

6. Non-Recourse Notes Payable

In April 2008, certain royalty payment rights and other license rights of the Company that it had under license agreements with two unrelated companies were transferred to TCD, a 100%-owned subsidiary in exchange for approximately $63.3 million. TCD raised funds for the transaction from a completed private placement of $75.0 million in Secured 16% Notes; due April 15, 2024 (the Notes). The Notes are non-recourse to the Company and are secured by TCD's assets including the royalty payment rights and other related rights of the transferred license agreements. While the Notes are outstanding, all royalty payments under these license agreements go to the payment of interest.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

6. Non-Recourse Notes Payable (Continued)

Royalties earned in excess of the stated interest rate will be applied to the principal on such Notes. Interest expense related to the Notes for the years ended December 31, 2007, 2008 and 2009 was $0.0 million, $8.5 million, $12.0 million, respectively, and $9.0 million and $9.1 million for the nine months ended September 30, 2009 and 2010, respectively. As of December 31, 2008, 2009 and September 30, 2010 TCD had interest payable of $2.5 million.

In conjunction with the issuance of the Notes, TCD initially placed $8.0 million into a restricted cash interest reserve account to cover payments required when the initial royalties are not sufficient to meet the interest payments due. At December 31, 2008 and 2009 and September 30, 2010, the remaining interest reserve balance was approximately $6.1 million, $1.9 million and $1.4 million, respectively, and is recorded as restricted cash and cash equivalents on the consolidated balance sheets. Any excess in the interest reserve account will be used as additional principal payments. The syndication costs to complete the transaction were approximately $4.4 million for investment banking, legal, consulting, accounting, and printing fees. These costs were capitalized as deferred financing costs and are being amortized over the term of the related debt using the effective interest method. Amortization of deferred financing costs for the years ended December 31, 2007, 2008 and 2009 approximated $0, $179,000 $270,000, respectively, and $203,000 and $202,000 for the nine month periods ended September 30, 2009 and 2010, respectively.

In the first quarter of 2010, the $8.0 million interest reserve was exhausted. As of September 30, 2010, TCD had approximately $1.4 million available for the quarterly interest payment of $3.0 million due on October 15, 2010. In December 2010, TCD has paid the interest shortfall of $1.6 million and had $0.8 million available for future interest payments. Under the terms of the Notes, TCD is not in default for payment of interest unless it fails to make payment in full on the interest payment by the next succeeding payment date. To date, TCD has been able to make payment in full of all interest payments before the next succeeding payment date. In the event of a default for failure to pay interest timely, the noteholders do not have recourse to the Company as the Notes are non-recourse beyond TCD and non-convertible into any other securities of the Company, and have not been guaranteed by the Company. The Company has pledged all equity interests of TCD to the noteholders so, upon an event of default, the noteholders could elect to exercise their rights to acquire those equity interests in TCD.

7. Stockholders' Equity (Deficit)

In 2005 and 2006, the Company issued an aggregate of 49,000,000 shares of its Series A convertible preferred stock (Series A Preferred Stock), which includes 4.0 million shares issued in connection with the purchase of certain assets from Shire Laboratories, Inc. The offering price per share was $1.00, resulting in aggregate gross cash proceeds of $45.0 million. The Company incurred approximately $286,000 in expenses directly related to these offerings, and these expenses were charged to additional paid-in capital.

Dividends are cumulative and accrue at a rate per annum of $0.07 per share, subject to adjustment for certain dilutive events. The Company is not obligated to pay the dividends unless it declares or pays dividends on any other shares of capital stock or in the event of a liquidation, dissolution or winding up

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

7. Stockholders' Equity (Deficit) (Continued)

of the Company. As of December 31, 2007, 2008 and 2009 dividends of approximately $6.8 million, $10.2 million and $13.7 million, respectively, have been accumulated. In liquidation, the holders of Series A Preferred Stock are entitled to receive $1.00 per share plus an amount equal to all accrued unpaid dividends plus any dividends declared but unpaid before any distribution to the holders of any shares of common stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock. A merger or consolidation in which the Company is a constituent party is deemed to be a liquidation.

The holders of the Series A Preferred Stock are entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of Series A Preferred Stock held are convertible as of the specified record date. The holders of the Series A Preferred Stock are entitled to elect four directors of the Company. Without the affirmative vote of two-thirds of then outstanding shares of Series A Preferred Stock, the Company shall not, among other things, change the number of directors from nine; create any additional shares of preferred stock; liquidate or dissolve the business affairs of the Company; create or issue any security or obligation that is convertible or exchangeable into securities of the Company; pay dividends or distributions on any shares of stock; or incur any liability for indebtedness that exceeds $500,000.

At any time, the Series A Preferred Stockholders may convert their Series A shares into shares of common stock. The initial conversion is one-for-one. The conversion ratio is subject to adjustment should specified dilutive events occur. The Company has reserved 49,000,000 shares of common stock for the potential conversion of its Series A Preferred Stock. Each share of Series A Preferred Stock automatically converts into shares of the Company's common stock upon closing of a firm commitment underwritten public offering of common stock registered under the Securities Act of 1933 at a price of at least $3.00 per share (adjusted to reflect stock splits, stock dividends, stock combinations, recapitalizations, and like occurrences), and which generates gross proceeds to the Company of at least $35.0 million. The holders of the Series A Preferred Stock have the right to elect to convert all outstanding shares of their stock into shares of common stock upon a two-thirds vote. The Series A Preferred Stock is not redeemable or contingently redeemable.

Common Stock

The holders of the common stock are entitled to one vote for each share of common stock held. Except for certain matters specified in the Company's amended and restated certificate of incorporation, the holders of common stock shall vote together as a single class on all matters with the holders of the Series A Preferred Stock.

8. Share-Based Payments

As of September 30, 2010, the Company had one share-based compensation plan. The Supernus Pharmaceuticals, Inc. 2005 Stock Plan (the Plan), which is stockholder-approved, permits the grant of options, purchase rights, and awards to its employees, officers, directors, consultants, or advisors for up to 8.0 million shares of common stock. The Company believes that such awards better align the interest of its employees with those of its stockholders. Option awards are generally granted with an exercise

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

8. Share-Based Payments (Continued)

price equal to the estimated fair value of the Company's common stock at the grant date; those option awards generally vest in four annual installments, starting on the first anniversary of the date of grant and have ten-year contractual terms. The Plan provides for the issuance of common stock of the Company upon the exercise of stock options. A portion of the grants to certain employees vests upon the achievement of specified Company milestones.

If an optionee is terminated for cause, the Company has the right and option to purchase, for a period of 180 days from the termination date, the shares of common stock the optionee obtained through the exercise of a stock option. The purchase price will equal the estimated fair market value of the common stock determined by mutual agreement between the Company and the optionee. There were no shares subject to repurchase at December 31, 2008, December 31, 2009, or September 30, 2010.

Stock-based compensation recognized related to the grant of employee and non-employee stock options, and non-vested stock was as follows:

	December 31,			September 30,	
	2007	2008	2009	2009	2010
				(unaudited)	
Research and development	$ 9,252	$ 27,872	$ 28,059	$ 21,044	$ 32,213
General and administrative	64,848	71,055	82,650	61,987	91,779
Total	$ 74,100	$ 98,927	$ 110,709	$ 83,031	$ 123,992

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model using the assumptions in the following table:

	Year Ended December 31,			September 30,
	2007	2008	2009	2010
				(unaudited)
Fair value of common stock	$0.10 – $0.40	$0.40	$0.40 – $1.76	$0.84
Expected volatility	60%	60%	60.3% – 61.5%	59.1% – 60.70%
Expected dividends	0%	0%	0%	0%
Expected term	6.25 years	6.25 years	6.25 years	6.25 years
Risk-free rate	3.81% – 5.25%	3.70% – 3.94%	1.65% – 2.72%	1.78% – 2.93%
Expected forfeiture rate	5%	5%	5%	5%

Fair Value of Common Stock—For all option grants the fair value of the Common Stock underlying the option grants was determined by the Company's Board of Directors (Board), with the assistance of management, which intended all options granted to be exercisable at a price per share not less than the per share fair value of the Company's Common Stock underlying those options on the date of grant. The Company utilized methodologies, approaches and assumptions as set forth by the American Institute of Certified Public Accountants, or the AICPA, in the AICPA Technical Practice

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

8. Share-Based Payments (Continued)

Aid, "*Valuation of Privately-Held-Company Equity Securities Issued as Compensation,*" referred to herein as the AICPA Practice Aid, when estimating the fair value of common stock at each grant date.

Given the lack of an active public market for the common stock, the Board employed a third-party valuation firm to assist in the determination of fair value by completing contemporaneous valuations. In the absence of a public market, and as a clinical stage company with no significant revenues from product sales, the Company considered a range of factors to determine the fair market value of the common stock at each grant date. The factors include: (1) the achievement of clinical and operational milestones by the Company, (2) the status of strategic relationships with collaborators, (3) the significant risks associated with the Company's stage of development, (4) capital market conditions for life science companies, particularly similarly situated privately held, early-stage life science companies, (5) the Company's available cash, financial condition, and results of operations, (6) the most recent sales of the Company's preferred stock, and (7) the preferential rights of the outstanding preferred stock.

Expected Volatility—Volatility is a measure of the amount by which a financial variable such as a share price has fluctuated (historical volatility) or is expected to fluctuate (expected volatility) during a period. The Company does not maintain an internal market for its shares and its shares are not traded privately. The Company has identified several public entities of similar size, complexity, and stage of development and, accordingly, historical volatility has been calculated using the volatility of these companies.

Dividend Yield—The Company has never declared or paid dividends and has no plans to do so in the foreseeable future.

Expected Term—This is the period of time that the options granted are expected to remain unexercised. Options granted have a maximum term of ten years. The Company determines the average expected life of stock options according the "simplified method" ad described in Staff Accounting Bulletin 110, which is the mid-point between the vesting date and the end of the contractual term. The Company estimates the expected life of the option term to be 6.25 years. Over time, management will track estimates of the expected life of the option term so that estimates will approximate actual behavior for similar options.

Risk-Free Interest Rate—This is the U.S. Treasury rate for the week of each option grant during the year, having a term that most closely resembles the expected life of the option.

Expected Forfeiture Rate—The forfeiture rate is the estimated percentage of options granted that are expected to be forfeited or canceled on an annual basis before becoming fully vested. The Company estimates the forfeiture rate based on turnover data with further consideration given to the class of employees to whom the options were granted.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

8. Share-Based Payments (Continued)

Information with respect to stock options granted to employees and nonemployees from January 1, 2009 through September 30, 2010 was as follows:

Grant Date	Number of Options Granted	Exercise Price	Estimated Fair Value	Intrinsic Value
01/19/2009	225,000	$ 0.40	$ 0.23	$ —
12/15/2009	257,200	$ 1.76	$ 1.03	$ —
02/10/2010	52,500	$ 0.84	$ 0.49	$ —
04/16/2010	32,750	$ 0.84	$ 0.49	$ —
07/20/2010	38,500	$ 0.84	$ 0.48	$ —

The following table summarizes stock option activity under the Plan during the year then ended:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term
Outstanding, December 31, 2008	1,737,219	$ 0.14	7.62
Granted	482,200	$ 1.13	9.53
Exercised	(197,826)	$ 0.10	6.11
Forfeited or expired	(372,485)	$ 0.11	
Outstanding, December 31, 2009	1,649,108	$ 0.44	7.53
Granted	123,750	$ 0.84	9.55
Exercised	(35,000)	$ 0.10	5.73
Forfeited or expired	(8,400)	$ 0.37	
Outstanding, September 30, 2010	1,729,458	$ 0.48	7.00
December 31, 2009:			
Vested and expected to vest	1,598,334	$ 0.44	7.51
Exercisable	709,061	$ 0.13	6.38
September 30, 2010:			
Vested and expected to vest	1,686,232	$ 0.47	6.97
Exercisable	940,324	$ 0.15	5.86

The aggregate intrinsic value of options outstanding and exercisable as of September 30, 2010 is approximately $857,000 and $646,000 respectively.

The weighted-average, grant-date fair value of options granted for the years ended December 31, 2007, 2008 and 2009, was $0.08, $0.24 and $0.66 per share, respectively. The total fair value of the underlying common stock related to shares that vested during the years ended December 31, 2007, 2008 and 2009, was $12,336, $37,163 and $48,945, respectively. As of December 31, 2009, the total unrecognized compensation expense, net of related forfeiture estimates, was $318,747 which the Company expects to recognize over a weighted-average period of approximately 2.27 years. As of September 30, 2010, the total unrecognized compensation expense, net of related forfeiture estimates,

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

8. Share-Based Payments (Continued)

was $283,095 which the Company expects to recognize over a weighted-average period of approximately 2.19 years (see Note 13).

On December 22, 2005, the Company granted an officer a restricted award for 3.5 million shares of common stock. Approximately 2.5 million shares of the award vested on a quarterly basis over a four-year period through 2009. The remaining 1.0 million shares of the award vest upon the achievement of specified clinical and regulatory milestones, of which there are 411,765 shares remaining to vest as of September 30, 2010, pending successful completion of one last milestone. Failure to achieve this milestone will result in cancellation of that portion of the award. As of December 31, 2008 and 2009, 1,029,409 and 411,765 shares, respectively, related to this award remained unvested. On the grant date, the Company estimated the fair value of unrestricted common stock to be $0.10. The total estimated fair value of $350,000 is being attributed a) to the requisite service period ratably over four years and b) the portion subject to the achievement of the specified performance conditions is being recognized when achievement of those conditions is considered probable. For the years ended December 31, 2007, 2008 and 2009 the Company recognized $61,764, $61,764 and $61,764, respectively, in stock compensation related to this arrangement. The following table summarizes activity related to these non-vested shares:

	Number of Shares	Weighted-Average Fair Value
Non-vested shares, January 1, 2009	1,029,409	$ 0.10
Granted	—	
Vested	(617,644)	$ 0.10
Forfeited	—	
Non-vested shares, December 31, 2009	411,765	$ 0.10
Granted	—	
Vested	—	
Forfeited	—	
Non-vested shares, December 31, 2010	411,765	$ 0.10

As of September 30, 2010, total stock compensation expense for non-vested awards not yet recognized is approximately $10,000. The remaining stock compensation expense related to non-vested awards will be recorded during 2010.

9. Income Taxes

For the years ended December 31, 2007, 2008 and 2009 there was no current provision or benefit for federal or state income taxes.

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

9. Income Taxes (Continued)

A reconciliation of the expected income tax benefit computed using the federal statutory income tax rate to the Company's effective income tax rate is as follows:

	Year Ended December 31,		
	2007	2008	2009
Income tax (benefit) computed at federal statutory tax rate	$ (5,873,173)	$ (11,383,775)	$ 156,481
Permanent items	9,402	25,665	37,845
State taxes	(939,066)	(1,818,968)	33,135
Change in valuation allowance	8,054,810	15,233,582	(666,690)
Other	(84,254)	414,166	1,424,790
Research and development credits	(1,167,719)	(2,470,670)	(985,561)
Total	$ —	$ —	$ —

The deferred tax benefit has been entirely offset by valuation allowances. The significant components of the Company's estimated deferred tax assets (liabilities) were as follows:

	December 31,		
	2007	2008	2009
Deferred tax assets:			
Net operating loss carryforward	$ 8,794,582	$ 21,900,173	$ 21,334,641
Deferred rent credit	164,202	172,547	314,434
Accrued compensation and nonqualified stock options	—	—	26,638
Deferred financing costs	—	—	(6,303)
Depreciation and amortization	(286,679)	(227,863)	(93,724)
Research and development credits	1,491,310	3,552,102	3,138,434
Other	395	434	16,583
Net deferred tax asset before valuation allowance	10,163,810	25,397,393	24,730,703
Valuation allowance	(10,163,810)	(25,397,393)	(24,730,703)
Net deferred tax asset	$ —	$ —	$ —

The Company has reported losses, except for a small, one-time gain in 2009, since inception and expects to continue to incur losses in the near term. These losses have not resulted in reported tax benefits because of increases in the valuation allowance for deferred tax assets that result from the inability to determine the realizability of the net operating loss carryforwards.

At December 31, 2009, the Company had net operating loss carryforwards of approximately $54.1 million, which begin to expire in 2025 if not utilized. The Company also had research and development tax credit carryforwards of approximately $3.1 million, which expire in 2025 if not utilized. The research and development tax credit reduces the Company's tax liability based on the amount spent on research and development activities on a new product or to improve existing products. Internal Revenue Code Section 382 places a limitation (the Section 382 Limitation) on the amount of

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

9. Income Taxes (Continued)

taxable income, that can be offset by net operating loss carryforwards after a change in control (generally, a greater than 50% change in ownership). Typically, after a control change, a company cannot deduct operating loss carryforwards in excess of the Section 382 Limitation. Due to these changes in ownership provisions, utilization of the net operating loss and tax credit carryforwards may be subject to an annual limitation regarding their utilization against taxable income in future periods.

If applicable, the Company would classify interest and penalties related to uncertain tax positions in income tax expense. The tax years 2005 through 2009 remain open to examination by one or more major taxing jurisdictions to which the Company is subject. There are no income tax examinations currently in progress.

10. Commitments and Contingencies

The Company leases office and lab space over periods extending through April 2013. The lease contains provisions for operating expense reimbursement as well as an annual 3% rent escalation. The lease also contains tenant and capital improvement allowances in the aggregate of $1.1 million. Through December 31, 2009, $774,464 of the allowance has been utilized and included in fixed assets and deferred rent. Rent expense for each of the years ended December 31, 2007, 2008 and 2009, was $921,000. The Company incurred $690,750 and $690,750 of rent expense for the nine month periods ending September 30, 2009 and 2010, respectively. Future minimum lease payments under noncancelable operating leases at December 31, 2009, are as follows:

	Operating Leases
Year ending December 31:	
2010	$ 953,000
2011	982,000
2012	1,011,000
2013	340,000
Thereafter	—
	$ 3,286,000

The Company has obtained exclusive licenses from third parties for proprietary rights to support the product candidates in the Company's psychiatry portfolio. Under license agreements with Afecta Pharmaceuticals, Inc. (Afecta), the Company has an exclusive option to evaluate Afecta's CNS pipeline, and to obtain exclusive worldwide rights to selected product candidates, including an exclusive license to SPN-810 and earlier stage product candidates of the Company. The Company does not owe any future milestone payments for SPN-810. However if the other product candidate is successfully developed and commercialized, the Company could be required to pay up $350,000 in total in potential future milestone payments through product approval and issuance of the U.S. patent for this product. The Company will also be obligated to pay royalties to Afecta based on worldwide net sales of each of these products in the low-single digits. The Company has also entered into a purchase and sale agreement with Rune Healthcare Limited (Rune), where the Company obtained the exclusive

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

10. Commitments and Contingencies (Continued)

worldwide rights to a product concept from Rune. There are no future milestone payments owing to Rune under this agreement. If the Company receives approval to market and sell any products based on the Rune product concept for SPN-809, the Company will be obligated to pay royalties to Rune based on net sales worldwide in the low single digits.

11. Employee Benefit Plan

On January 2, 2006, the Company established the Supernus Pharmaceuticals, Inc. 401(k) Profit Sharing Plan (the Plan) for its employees under Section 401(k) of the Internal Revenue Code (Code). Under this Plan, all full-time employees who are at least 21 years old are eligible to participate in the Plan. Employees may participate starting on the first day of each month following their employment. Employees may contribute up to the lesser of 90% of eligible compensation or the applicable limit established by the Code.

Employees are 100% vested in their contributions to the Plan. The Company matches 100% of a participant's contribution for the first 3% of their salary deferral and matches 50% of the next 2% of their salary deferral. As determined by the Board, the Company may elect to make a discretionary contribution not exceeding 60% of the annual compensation paid to all participating employees. The Company's contributions to the Plan approximated $205,000 and $204,000 for the nine months ended September 30, 2009 and 2010, respectively, and $210,000, $273,000 and $255,000 for the years ended December 31, 2007, 2008 and 2009, respectively.

12. Related-Party Transactions

In May 2009, the Company entered into an amendment to a license agreement with Shire LLC, a holder of Series A convertible preferred stock, whereby Shire LLC and its affiliates paid the Company a one-time, lump-sum payment of $36.9 million in return for a fully paid-up license for one of its products that utilizes the Company's proprietary technologies. All four criteria necessary to recognize revenue in accordance with ASC 605-10-S25, *Revenue Recognition—Overall—Recognition*, were met during 2009 related to this transaction. Accordingly, the entire amount was recorded as royalty revenue in the consolidated statement of operations.

13. Subsequent Events

In December 2010, the Company amended its lease arrangement for its office and lab space in order to extend the expiration of the term from April 2013 to April 2018. Commencing in November 2013, the basic annual rent will be increased 2% per annum for the remaining term. The Company may elect to extend the term of the lease for an additional five year period on the same terms and conditions. In addition, the lease amendment provides for a tenant improvement allowance of $1,250,000.

In November 2010, the Board repriced 255,000 of the options granted on December 15, 2009 from a per share exercise price of $1.76 to $0.64. In addition, the Board approved the modification of the performance vesting requirements related to 157,697 employee stock options and 411,765 shares of

Supernus Pharmaceuticals, Inc.

Notes to Consolidated Financial Statements (Continued)

December 31, 2007, 2008 and 2009 and the unaudited nine month periods ended September 30, 2009 and 2010

13. Subsequent Events (Continued)

non-vested stock awarded to the Company's chief executive officer. The vesting of these share-based awards were contingent upon the filing of the Company's first new drug application on or before December 22, 2010, and the Board extended the deadline for the achievement of this performance condition to March 31, 2011. As a result of these actions, there is no immediate charge related to the repriced and modified options, and the Company will recognize additional stock based compensation of approximately $50,000 over the remaining vesting periods for these options.

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Shares

SUPERNUS PHARMACEUTICALS, INC.

Common Stock

PRELIMINARY PROSPECTUS

, 2011

Citi
Barclays Capital

Cowen and Company

Stifel Nicolaus Weisel

Until , 2011 (25 days after the date of this prospectus), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 13. ***Other Expenses of Issuance and Distribution.***

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered hereby. All amounts are estimates except the SEC Registration Fee, the FINRA filing fee and NASDAQ Global Market listing fee.

	Amount to be Paid
SEC registration fee	$ 7,130
FINRA filing fee	$ 10,500
NASDAQ Global Market initial listing fee	$ *
Blue Sky fees and expenses	$ *
Printing and engraving expenses	$ *
Legal fees and expenses	$ *
Accounting fees and expenses	$ *
Transfer agent and registrar fees	$ *
Miscellaneous	$ *
Total	$ *

* To be completed by amendment.

ITEM 14. ***Indemnification of Directors and Officers.***

On completion of this offering, our amended and restated certificate of incorporation will contain provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware, the personal liability of directors and executive officers for monetary damages for breach of their fiduciary duties as a director or officer. Our amended and restated certificate of incorporation and bylaws will provide that we shall indemnify our directors and executive officers and may indemnify our employees and other agents to the fullest extent permitted by the General Corporation Law of the State of Delaware.

Sections 145 and 102(b)(7) of the General Corporation Law of the State of Delaware provide that a corporation may indemnify any person made a party to an action by reason of the fact that he or she was a director, executive officer, employee or agent of the corporation or is or was serving at the request of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

We are entering into indemnification agreements with each of our directors and executive officers, in addition to the indemnification provided for in our amended and restated certificate of incorporation and bylaws, and intend to enter into indemnification agreements with any new directors and executive officers in the future.

We intend to purchase and maintain insurance on behalf of any person who is or was a director or officer of our company against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The Underwriting Agreement (to be filed as Exhibit 1.1 hereto) provides for indemnification by the underwriters of us and our executive officers and directors, and by us of the underwriters, for certain liabilities, including liabilities arising under the Securities Act.

See also the undertakings set out in response to Item 17 herein.

ITEM 15. ***Recent Sales of Unregistered Securities.***

The following sets forth information regarding all unregistered securities sold during the last three fiscal years:

(a) Within the last three years, we have issued and sold the following securities:

(1) From December 21, 2007 to July 20, 2010, we issued 282,826 shares of common stock upon the exercise of options to purchase shares of our common stock under the 2005 Stock Plan, all at $0.10 per share.

The sales and issuances of restricted securities in the transactions described in the paragraph above were deemed to be exempt from registration under the Securities Act in reliance upon the following exemptions: Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions pursuant to a written compensation benefit plan and contracts relating to compensation as provided under Rule 701.

(b) From April 16, 2008 to November 16, 2010, we granted to our employees and consultants options to purchase an aggregate of 1,748,050 shares of our common stock under the 2005 Stock Plan at prices ranging from $0.40 to $1.76 per share.

The sales and issuances of securities in the transactions described in the above paragraph (b) were deemed to be exempt from registration under the Securities Act in reliance upon Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions pursuant to a written compensation benefit plan and contracts relating to compensation as provided under Rule 701.

(c) There were no underwritten offerings employed in connection with any of the transactions set forth in Item 15.

ITEM 16. ***Exhibits and Financial Statement Schedules.***

(a) Exhibits—The exhibits to the registration statement are listed in the Exhibit Index to this Registration Statement beginning on page E-1 and are incorporated herein by reference.

(b) Financial Statements Schedules—All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

ITEM 17. ***Undertakings.***

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

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 14 or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities

Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Rockville, State of Maryland, on the 22nd day of December, 2010.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ JACK A. KHATTAR

Name: Jack A. Khattar
Title: President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Jack Khattar and Russell Wilson, and each of them acting individually, as such person's true and lawful attorneys-in-fact and agents, with full power of each to act alone, with full powers of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign the Registration Statement filed herewith and any and all amendments to said Registration Statement (including post-effective amendments and any related registration statements thereto filed pursuant to Rule 462 and otherwise), and file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, with full power of each to act alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or such person's or their substitutes, may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ JACK A. KHATTAR Jack A. Khattar	President and Chief Executive Officer and Director (Principal Executive Officer)	December 22, 2010
/s/ RUSSELL P. WILSON Russell P. Wilson	Vice President, Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	December 22, 2010
/s/ M. JAMES BARRETT, PH.D. M. James Barrett, Ph.D.	Director	December 22, 2010

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Signature	Title	Date
/s/ MICHAEL F. BIGHAM Michael F. Bigham	Director	December 22, 2010
/s/ FREDERICK M. HUDSON Frederick M. Hudson	Director	December 22, 2010
/s/ CHARLES W. NEWHALL, III Charles W. Newhall, III	Director	December 22, 2010
/s/ WILLIAM A. NUERGE William A. Nuerge	Director	December 22, 2010
/s/ MICHAEL B. SHEFFERY, PH.D. Michael B. Sheffery, Ph.D.	Director	December 22, 2010

EXHIBIT INDEX

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
3.1	Amended and Restated Certificate of Incorporation of the Registrant (as currently in effect)
3.2*	Form of Second Amended and Restated Certificate of Incorporation (to be effective upon the closing of this offering)
3.3	By-laws of the Registrant (as currently in effect)
3.4*	Form of Amended and Restated By-laws of the Registrant (to be effective upon the closing of this offering)
4.1*	Specimen Stock Certificate evidencing the shares of common stock
5.1*	Opinion of Ropes & Gray LLP
10.1	2005 Stock Plan and form agreements thereunder
10.2	Supplemental Executive Retirement Plan
10.3	Employment Agreement, dated as of December 22, 2005, by and between the Registrant and Jack Khattar
10.4	Stock Restriction Agreement, dated December 22, 2005, by and between the Registrant and Jack Khattar
10.5	Lease, dated as of April 19, 1999, by and between ARE Acquisitions, LLC and Shire Laboratories Inc.
10.6	First Amendment to Lease, dated as of November 1, 2002, by and between ARE Acquisitions, LLC and Shire Laboratories Inc.
10.7	Second Amendment to Lease, dated as of December 22, 2005, by and among ARE-East Gude Lease, LLC, Shire Laboratories Inc. and Supernus Pharmaceuticals, Inc.
10.8	Third Amendment to Lease, dated as of November 24, 2010, by and between ARE-East Gude Lease, LLC and the Registrant (successor-in-interest to Shire Laboratories Inc.)
10.9	Investor Rights Agreement, dated as of December 22, 2005, by and among the Registrant and the holders of shares of Series A convertible preferred stock identified therein, as amended
10.10*	Asset Purchase and Contribution Agreement, dated as of December 22, 2005, among the Registrant, Shire Laboratories Inc. and Shire plc
10.11*	Exclusive License Agreement, dated as of June 6, 2006, by and between the Registrant and United Therapeutics Corporation
10.12*	Purchase and Sale Agreement, dated as of June 9, 2006, by and between the Registrant and Rune Healthcare Limited
10.13*	Exclusive License Agreement, dated as of November 2, 2007, by and between the Registrant and Afecta Pharmaceuticals, Inc.
10.14*	Offer Letter, dated June 7, 2005, to Dr. Jones W. Bryan from the Registrant
10.15*	Offer Letter, dated June 10, 2005, to Dr. Padmanabh P. Bhatt from the Registrant
21.1	Subsidiaries of the Registrant
23.1	Consent of Ernst & Young LLP
23.2*	Consent of Ropes & Gray LLP (included in 5.1)
24.1	Power of Attorney (included on signature page)

* To be filed by amendment.

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SUPERNUS PHARMACEUTICALS, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Supernus Pharmaceuticals, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"), hereby certifies as follows:

1. That the name of this corporation is Supernus Pharmaceuticals, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on March 30, 2005.

2. This Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Certificate of Incorporation of said Corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

3. The text of the Certificate of Incorporation is hereby amended and restated to read in full as follows:

FIRST: The name of this corporation is Supernus Pharmaceuticals, Inc. (the "Corporation")

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of new Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) sixty-two million (62,000,000) shares of Common Stock, $0.001 par value per share ("Common Stock"), and (ii) forty-nine million (49,000,000) shares of Preferred Stock, $0.001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation. Unless otherwise indicated, references to "Sections" or "Subsections" in this Article refer to sections and subsections of this Article Fourth

A. COMMON STOCK

1 General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote fox each share of Common Stock hold at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the General Corporation Law. Except as provided by law or this Amended and Restated Certificate of Incorporation (as amended from time to time, the "Certificate of Incorporation"), holders of Common Stock shall vote together as a single class on all matters with the holders of Preferred Stock. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or by the terms of any series of Preferred Stock.

C. SERIES A CONVERTIBLE PREFERRED STOCK

Forty-nine million (49,000,000) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series A Convertible Preferred Stock" with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. The Series A Convertible Preferred Stock is sometimes referred to herein as the "Series A Preferred Stock" and "Preferred Stock".

1. Dividends.

(a) From and after the date of the issuance of any shares of Series A Preferred Stock, dividends at the rate per annum of $0.07 per share shall accrue on such shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this paragraph 1(a) or in Subsection 2(a), the Corporation shall be under no obligation to pay such

Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on any other shares of capital stock of the Corporation (other than dividends on shares of Common Stock payable solely in shares of Common Stock) unless the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series A Preferred Stock and not previously paid plus (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series A Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series A Preferred Stock determined by dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock and multiplying such fraction by an amount equal to $1 00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting the number of issued and outstanding shares of Series A Preferred Stock) (such amount, as so adjusted from time to time, being hereinafter referred to as the "Series A Original Issue Price").

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales

(a) Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on liquidation junior to the Series A Preferred Stock (such Common Stock and other stock being collectively referred to as "Junior Stock") by reason of their ownership thereof, an amount equal to the Series A Original Issue Price plus an amount equal to all Accruing Dividends unpaid thereon (whether or not declared) plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Distribution of Remaining Assets. After the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock under Subsection 2(a), the remaining assets available for distribution to the Corporation's stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, Junior Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose an such securities as if they had been converted to Common Stock pursuant to

the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Subsection 2(a) and 2(b) is hereinafter referred to as the "Series A Liquidation Amount."

(c) Deemed Liquidation Events.

(i) The following events shall be deemed to be a liquidation of the Corporation for purposes of this Section 2 (each a "Deemed Liquidation Event"), unless the holders of at least two-thirds (66 2/3%) in interest of the Series A Preferred Stock elect otherwise by written notice given to the Corporation at least 10 days prior to the effective date of any such event:

(A) a merger or consolidation in which

(I) the Corporation is a constituent party or

(II) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted or exchanged for shares of capital stock which represent, immediately following such merger or consolidation at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 2(c)(i), all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged);

(B) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole except where such sale, lease, transfer or other disposition is to a wholly owned subsidiary of the Corporation; or

(C) a transaction or series of related transactions in which a person or a group of persons (as defined in Rule 13d-5(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) acquires beneficial ownership (as determined in accordance with Rule 13d-3 under the Exchange Act) of a majority of voting power of the voting shares of the Corporation

(ii) The Corporation shall not have the power to effect any transaction constituting a Deemed Liquidation Event pursuant to Subsection 2(c)(i)(A)(I) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2(a) and 2(b) above.

(iii) In the event of a Deemed Liquidation Event pursuant to Subsection 2(c)(i)(A)(II) or (B) above, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 60 days after such Deemed Liquidation Event, then (A) the Corporation shall deliver a written notice to each holder of Series A Preferred Stock no later than the 60th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Series A Preferred Stock, and (B) if the holders of at least two-thirds (66 2/3%) of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than 75 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation) (the "Net Proceeds") to redeem, to the extent legally available therefor, on the 90th day after such Deemed Liquidation Event (the "Liquidation Redemption Date"), all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. In the event of a redemption pursuant to the preceding sentence, if the Net Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, or if the Corporation does not have sufficient lawfully available funds to effect such redemption, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock to the fullest extent of such Net Proceeds or such lawfully available funds, as the case may be, and, where such redemption is limited by the amount of lawfully available funds, the Corporation shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Subsection 2(c)(iii), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in the ordinary course of business.

(iv) The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. If' the amount deemed paid or distributed under this Subsection 2(c)(iv) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(A) For securities not subject to investment letters or other similar restrictions on free marketability,

(1) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities

on such exchange or market over the thirty-day (30) period ending three (3) days prior to the closing of such transaction resulting in a Deemed Liquidation Event;

(2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty-day (30) day period ending three (3) days prior to the closing of such transaction resulting in a Deemed Liquidation Event; or

(3) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(B) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of directors of the Corporation) from the market value as determined pursuant to clause (A) above so as to reflect the approximate fair market value thereof.

3. Voting.

(a) General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the provisions of Subsection 3(b) or 3(c) below, holders of Series A Preferred Stock shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) Board Composition. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect four (4) directors of the Corporation (the "Series A Directors"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of two-thirds (66 2/3%) of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "Common Directors"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred Stock), voting together as a single class shall be entitled to elect the balance, if any, of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person

or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3(b). The rights of the holders of the Series A Preferred under the first sentence of this Subsection 3(b) shall terminate on the first date on which there are no issued and outstanding shares of Series A Preferred Stock.

(c) At any time when shares of Series A Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Certificate of Incorporation, and in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least two-thirds (66 2/3%) in interest of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation shall not, either directly or by amendment, merger, consolidation or otherwise:

(i) increase or decrease the authorized number of directors constituting the Board of Directors from nine (9) directors;

(ii) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

(iii) create or authorize any additional shares of Preferred Stock and increase or decrease the number of shares of Preferred Stock;

(iv) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

(v) create, authorize or issue (by reclassification or otherwise) any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or increase the authorized number of shares of Series A Preferred Stock, or increase the authorized number of shares of any additional class or series of shares of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights, or create or authorize any obligation or security convertible into shares of any class or series of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(iv) create, or authorize the creation of; or issue, or authorize the issuance of, or permit any subsidiary to take any such action, any bond, note, debt security or other obligation which by its terms is convertible into or exchangeable for or having option rights to purchase any equity security of the Corporation and any security of the Corporation

which is a combination of debt and equity unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(vi) reclassify any class or series of shares of Common Stock into shares of a different class or series of stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation and with respect to the payment of dividends and redemption rights;

(vii) purchase or redeem or pay or declare any dividend or make any distribution an, any shares of stock other than the Series A Preferred Stock as expressly authorized herein, or permit any subsidiary of the Corporation to take any such action, except for securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service on such terms as approved by the Board of Directors;

(viii) change the principal business of the Corporation, enter into a new line of business or exit the current line of business of the Corporation;

(ix) create, incur, assume or suffer to exist any liability with respect to indebtedness for money borrowed which exceeds, in the aggregate, $500,000; or

(x) assume, guarantee, endorse or otherwise become directly or contingently liable on (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) any indebtedness of any other person which exceeds, in the aggregate, $500,000.

4. Optional Conversion.

The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially be equal to the Series A Original Issue Price. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation Whether or not fractional shares would be issuable

upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(i) In order for a holder of Series A Preferred Stock to voluntarily convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves us its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent of such certificates (or lost certificate affidavit and agreement) and notice (or by the Corporation if the Corporation serves as its own transfer agent) shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver at such office to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price.

(iii) All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and shall not be reissued as shares of such series, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

(iv) Upon any such conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(v) The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax of has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Series A Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Section 4, the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) "Series A Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4(d)(iii) below, deemed to be issued) by the Corporation after the Series A Original Issue Date, other than the following ("Exempted Securities"):

(I) shares of Common Stock issued or deemed issued as a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4(c) or 4(f) below;

(II) an aggregate of eight million (8,000,000) shares of Common Stock authorized under the Corporation's 2005 Stock Plan, of which three million five hundred thousand (3,500,000) shares of Common Stock have been issued as restricted stock as of the Series A Original Issue Date or are issuable upon the exercise of Options outstanding as of the Series A Original Issue Date and four million five hundred thousand (4,500,000) shares of Common Stock are issuable to employees, consultants or directors pursuant to stock option, stock grant, stock purchase or similar plans or arrangements approved by the Corporation's Board of Directors or a committee thereof;

(III) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(IV) shares of Common Stock issued pursuant to the acquisition of another entity by the Corporation by merger, consolidation, reorganization or similar transaction (whereby the Corporation owns no less than a majority of the voting power of such corporation) or purchase of substantially all of such entity's stock or assets, if such acquisition has been approved by the Board of Directors;

(V) shares of Common Stock issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors;

(VI) shares of Common Stock issued or issuable to strategic suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors; or

(VII) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, marketing or other similar agreements or strategic partnerships approved by the Board of Directors.,

(ii) No Adjustment of Series A Conversion Price. No adjustment in the Series A Conversion Price shall be made as the result of the issuance of Additional Shares of Common Stock if: (a) the consideration per share (determined pursuant to Subsection 4(d)(v)) for such Additional Shares of Common Stock issued or deemed to be issued by the Corporation is equal to or greater than the applicable Series A Conversion Price in effect immediately prior to the issuance or deemed issuance of such Additional Shares of Common Stock, or (b) prior to such issuance or deemed issuance, the Corporation receives written notice from the holders of at least two-thirds (66 2/3%) of the then outstanding shares of Series A Preferred Stock agreeing

that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(A) If the Corporation at any time or from time to time after the Series A Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Subsections 4(d)(i)(D)(I), (II), (III), (IV), (V) or (VI)) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time the Option is granted or the Convertible Security is issued or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4(d)(iv) below, are revised (either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then, effective upon such increase or decrease becoming effective, the Series A Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no adjustment pursuant to this clause (B) shall have the effect of increasing the Series A Conversion Price to an amount which exceeds the lower of (i) the Series A Conversion Price on the original adjustment date, or (ii) the Series A Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(C) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which, upon exercise, conversion or exchange thereof, would entitle the holder thereof to receive Exempted Securities pursuant to Subsections 4(d)(i)(D)(I), (II), (III), (IV), (V) or (VI)), the issuance of which did not result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4(d)(iv) below (either because the consideration per share (determined pursuant to Subsection 4(d)(v) hereof) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Series A Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series A Original Issue Date), are revised after the Series A Original Issue Date

(either automatically pursuant to the provisions contained therein or as a result of an amendment to such terms) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4(d)(iii)(A) above) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(iv) Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series A Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4(d)(iii)), without consideration or for a consideration per share less than the applicable Series A Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$CP_2 = CP_1$ multiplied by $(A + B) \div (A + C)$For purposes of the foregoing formula, the following definitions shall apply:

(I) CP_2 shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(II) CP_1 shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(III) "A" shall mean the number of (i) shares of Common Stock issued and outstanding, (ii) shares of Common Stock issuable upon conversion of Options to purchase shares of Common Stock, and (iii) shares of Common Stock issuable upon conversion of Preferred Stock, in each case issued and outstanding immediately prior to such issue of Additional Shares of Common Stock;

(IV) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of the issuance of such Additional Shares of Common Stock by CP_1); and

(V) "C" shall mean the number of Additional Shares of Common Stock issued in such transaction.

(v) Determination of Consideration. For purposes of this Subsection 4(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors of the Corporation.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing

(I) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(II) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(vi) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Series A Conversion Price pursuant to the terms of Subsection 4(d)(iv) above, and such issuance dates occur within a period of no more than 30 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Series A Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without additional giving effect to any adjustments as a result of any subsequent issuances within such period).

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock without a comparable subdivision of the Series A Preferred Stock or combine the outstanding shares of Series A Preferred Stock without a comparable combination of the Common Stock, the Series A Conversion Price in effect immediately before that subdivision or combination shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock without a comparable combination of the Series A Preferred Stock or effect a subdivision of the outstanding shares of Series A Preferred Stock without a comparable subdivision of the Common Stock, the Series A Conversion Price in effect immediately before the combination or subdivision shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion

Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event or (ii) a dividend or other distribution of shares of Series A Preferred Stock which are convertible, as of the date of such event, into such number of shares of Common Stock as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of capital stock of the Corporation entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section (1) do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of such capital stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2(c), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections (e), (f) or (g) of this Section 4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

(i) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days

thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

(j) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least 20 days prior to the record date or effective date for the event specified in such notice. Any notice required by the provisions hereof to be given to a holder of shares of Preferred Stock shall be deemed sent to such holder if deposited in the United States mail, postage prepaid, and addressed to such holder at his, her or its address appearing on the books of the Corporation.

5. Automatic Conversion.

(a) Upon the earlier of (A) the closing of the sale of shares of Common Stock to the public at a price of at least three (3) times the Series A Original Issue Price (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar

recapitalizations affecting such shares) in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $35,000,000 of gross proceeds to the Corporation (a "Qualified Public Offering") or (B) a date specified by vote or written consent of the holders of at least two-thirds (66 2/3%) in interest of the then outstanding shares of Series A Preferred Stock (the "Mandatory Conversion Date"), (i) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation as shares of such series.

(b) All holders of record of shares of Series A Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid, or given by electronic communication in compliance with the provisions of the General Corporation Law, to each record holder of Series A Preferred Stock. Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his, her or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 5. On the Mandatory Conversion Date, all outstanding shares of Series A Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Series A Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Series A Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Series A Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his, her or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 4(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and cancelled and the shares of Series A Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date Such converted Series A Preferred Stock may not be reissued as shares of such Series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

6. Redemption. The Series A Preferred Stock is not redeemable except in accordance with the Deemed Liquidation provisions of Subsection 2(d)(iii).

7. Waiver. Any of the rights, powers or preferences of the holders of Series A Preferred Stock set forth herein may be defeased by the affirmative consent or vote of the holders of at least two-thirds (66 2/3%) of the shares of Series A Preferred Stock then outstanding

FIFTH: Subject to any additional vote required by this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Sixth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Sixth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

SEVENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Seventh shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or other agent occurring prior to, such amendment, repeal or modification.

EIGHTH: Subject to any additional vote required by this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

NINTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “Excluded Opportunity” is any matter, transaction or interest that is presented to, or acquired,

created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series A Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely is such Covered Person's capacity as a director of the Corporation.

TENTH: Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

ELEVENTH: The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

* * *

4. The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

5. That said Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this 2nd day of February, 2006.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President

Exhibit 3.3

BY-LAWS

OF

SUPERNUS PHARMACEUTICALS, INC.

As of March 30, 2005

ARTICLE I

Stockholders' Meetings

1. Places of meetings. All meetings of stockholders shall be held at such place or places in or outside of Delaware as the board of directors may from time to time determine or as may be designated in the notice of meeting or waiver of notice thereof, subject to any provisions of the laws of Delaware.

2. Annual meetings. Unless otherwise determined from time to time by the board of directors, the annual meeting of stockholders shall be held each year for the election of directors and the transaction of such other business as may properly come before the meeting on the first Monday in the fourth month following the close of the fiscal year commencing at some time between 10 A.M. and 3 P.M., if not a legal holiday and if a legal holiday, then on the day following at the same time. If the annual meeting is not held on the date designated, it may be held as soon thereafter as convenient and shall be called the annual meeting. Written notice of the time and place of the annual meeting shall be given by mail or e-mail to each stockholder entitled to vote at his address as it appears on the records of the corporation not less than the minimum nor more than the maximum number of days permitted under the laws of Delaware prior to the scheduled date thereof, unless such notice is waived as provided by Article VIII of these By-laws. Without limiting the manner by which notice otherwise may be effectively given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law (the "DGCL").

3. Special meetings. A special meeting of stockholders may be called at any time by order of the board of directors and shall be called by the president or secretary or an assistant secretary at the written request of the holders of at least 25% of the total number of shares of preferred stock then outstanding and entitled to vote stating the specific purposes thereof. Written notice of the time, place and specific purposes of such meetings shall be given by mail or e-mail to each stockholder entitled to vote thereat at his address as it appears on the records of the corporation not less than the minimum nor more than the maximum number of days prior to the scheduled date thereof permitted under the laws of Delaware, unless such notice is waived as provided in Article VIII of these By-laws. Without limiting the manner by which notice otherwise may be

effectively given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

4. Meetings without notice. Meetings of the stockholders may be held at any time without notice when all the stockholders entitled to vote thereat are present in person or by proxy.

5. Voting. At all meetings of stockholders, each stockholder entitled to vote on the record date as determined under Article V Section 3 of these By-laws or if not so determined as prescribed under the laws of Delaware shall be entitled to one vote for each share of stock standing of record in his name, subject to any restrictions or qualifications set forth in the certificate of incorporation or any amendment thereto or in any shareholder agreement.

6. Quorum. At any stockholders' meeting, a majority of the number of shares of stock outstanding and entitled to vote thereat present in person or by proxy shall constitute a quorum but a smaller interest may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice, subject to such limitation as may be imposed under the laws of Delaware. When a quorum is present at any meeting, a majority of the number of shares of stock entitled to vote present thereat shall decide any question brought before such meeting unless the question is one upon which a different vote is required by express provision of the laws of Delaware, the certificate of incorporation or these By-laws, in which case such express provisions shall govern.

7. List of stockholders. At least ten days before every meeting, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of and the number of shares registered in the name of each stockholder, shall be prepared by the secretary or the transfer agent in charge of the stock ledger of the corporation. Such list shall be open for examination by any stockholder as required by the laws of Delaware. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting.

8. Consent in lieu of meeting. Unless otherwise provided in the certificate of incorporation or any amendment thereto or by the laws of Delaware, any action required by the laws of Delaware to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if: (i) a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted; and (ii) prompt notice of the taking of such action by less than unanimous written consent is given to the other stockholders to the extent and in the manner required by the laws of Delaware.

ARTICLE II

Board of Directors

1. Number and qualification. A board of directors shall be elected at each annual meeting of stockholders, each director so elected to serve until the election and qualification of his successor or until his earlier resignation or removal as provided in these By-laws or as agreed to among the stockholders in an executed stockholder voting agreement. The initial number of directors shall be such as may be determined by the incorporators unless the initial directors are named in the certificate of incorporation, and thereafter the number of directors shall be such as may be determined from time to time by the stockholders or by the board of directors, but in no event shall the number be less than the minimum authorized under the laws of Delaware. In case of any increase in the number of directors between elections by the stockholders, the additional directorships shall be considered vacancies and shall be filled in the manner prescribed in Article IV of these By-laws. Directors need not be stockholders. The initial board of directors shall be elected by the incorporators, unless such directors are named in the certificate of incorporation.

2. Powers. The business and affairs of the corporation shall be carried on by or under the direction of the board of directors, which shall have all the powers authorized by the laws of Delaware, subject to such limitations as may be provided by the certificate of incorporation or these By-laws.

3. Compensation. The board of directors may from time to time by resolution authorize the payment of fees or other compensation to the directors for services as such to the corporation, including, but not limited to, fees for attendance at all meetings of the board or of the executive or other committees, and determine the amount of such fees and compensation. Directors shall in any event be paid their traveling expenses for attendance at all meetings of the board or of the executive or other committees. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor in amounts authorized or otherwise approved from time to time by the board of directors.

4. Meetings and quorum. Meetings of the board of directors may be held either in or outside of Delaware. A quorum shall be a majority of the directors then in office. A director will be considered present at a meeting, even though not physically present, to the extent and in the manner authorized by the laws of Delaware. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

The board of directors elected at any annual stockholders' meeting shall, at the close of that meeting without further notice if a quorum of directors be then present or as soon thereafter as may be convenient, hold a meeting for the election of officers and

the transaction of any other business. At such meeting they shall elect a president, a secretary and a treasurer, and such other officers as they may deem proper, none of whom except the chairman of the board, if elected, need be members of the board of directors.

The board of directors may from time to time provide for the holding of regular meetings with or without notice and may fix the times and places at which such meetings are to be held. Special meetings of the board of directors may be called, orally or in writing, at any time by the president, if one is elected, the chairman of the board or upon the request of any director. Directors may participate in meetings of the board of directors by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting.

Notice of each meeting, other than a regular meeting (unless required by the board of directors), shall be given to each director by e-mailing or mailing the same to each director at his residence or business address at least two days before the meeting or by delivering the same to him personally or by telephone or telegraph to him at least one day before the meeting unless, in case of exigency, the chairman of the board, the president or secretary shall prescribe a shorter notice to be given personally or by telephone, telegraph, cable or wireless to all or any one or more of the directors at their respective residences or places of business.

Notice of any meeting shall state the time and place of such meeting, but need not state the purpose thereof unless otherwise required by the laws of Delaware, the certificate of incorporation, the By-laws, or the board of directors.

5. Committees. The board of directors may by resolution passed by a majority of the whole board provide for one or more committees of at least one or more directors and shall elect the members thereof to serve during the pleasure of the board and may designate one of such members to act as chairman of such committees. The board of directors may at any time change the membership of the committee, fill vacancies in it, designate alternate members to replace any absent or disqualified members at any meeting of the committee, or dissolve it.

Any such committee shall possess and may exercise any or all of the powers of the board of directors in the management or direction of the business and affairs of the corporation and under the By-laws to the extent authorized by resolution adopted by a majority of the entire board of directors, subject to such limitations as may be imposed by the laws of Delaware, but no such committee shall have the power or authority in reference to the following: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any provision of these By-laws.

Except as the board of directors may otherwise determine, any such committee may determine its rules of procedure and the notice to be given of its meetings, and it may appoint such committees and assistants as it shall from time to time deem necessary. A majority of the members of the committee shall constitute a quorum.

6. Action without meetings. Any action required or permitted to be taken at any meeting of the board of directors or any committee thereof may be taken without meeting by written consent setting forth the action so taken signed by all of the directors entitled to vote with respect to the subject matter thereof.

ARTICLE III

Officers

1. Titles and election. The officers of the corporation shall be a president, a secretary and a treasurer. The President, Treasurer and Secretary shall be elected at the first meeting of the board following any annual stockholders' meeting, each of whom shall hold office at the pleasure of the board except as may otherwise be approved by the board of directors, or until his earlier resignation, removal under these By-laws or other termination of his employment. Other officers may be chosen by the board of directors at such meeting or at any other meeting. Any person may hold more than one office if the duties can be consistently performed by the same person, and to the extent permitted by the laws of Delaware.

The board of directors, in its discretion, may also at any time elect or appoint a chairman of the board of directors who shall be a director, a chief executive officer, one or more vice presidents, assistant secretaries and assistant treasurers and such other officers as it may deem advisable, each of whom shall hold office at the pleasure of the board, except as may otherwise be approved by the board of directors, or until his earlier resignation, removal or other termination of employment, and shall have such authority and shall perform such duties as may be prescribed or determined from time to time by the board or in case of officers other than the chairman of the board, if not so prescribed or determined by the board of directors, as the president or the then senior executive officer may prescribe or determine.

The board of directors may require any officer or other employee or agent to give bond for the faithful performance of his duties in such form and with such sureties as the board may require.

2. Duties. Subject to such extension, limitations, and other provisions as the board of directors or the By-laws may from time to time prescribe or determine, the following officers shall have the following powers and duties:

(a) Chairman of the Board. The chairman of the board, when present, shall preside at all meetings of the stockholders and of the board of directors and shall be

charged with general supervision of the management and policy of the corporation, and shall have such other powers and perform such other duties as the board of directors may prescribe from time to time.

(b) Chief Executive Officer. The Chief Executive Officer, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

(c) President. Subject to the board of directors and the provisions of these By-laws, the president shall be a chief executive officer of the corporation, shall exercise the powers and authority and perform all of the duties commonly incident to his office, shall in the absence of the chairman of the board preside at all meetings of the stockholders and of the board of directors if he is a director, and shall perform such other duties as the board of directors shall specify from time to time. The president or a vice president, unless some other person is thereunto specifically authorized by the board of directors, shall sign all bonds, debentures, promissory notes, deeds and contracts of the corporation.

(d) Vice President. The vice president or vice presidents shall perform such duties as may be assigned to them from time to time by the board of directors or by the president if the board does not do so. In the absence or disability of the president, the vice presidents in order of seniority may, unless otherwise determined by the board, exercise the powers and perform the duties pertaining to the office of president, except that if one or more executive vice presidents has been elected or appointed, the person holding such office in order of seniority shall exercise the powers and perform the duties of the office of president.

(e) Secretary. The secretary or in his absence an assistant secretary shall keep the minutes of all meetings of stockholders and of the board of directors, give and serve all notices, attend to such correspondence as may be assigned to him, keep in safe custody the seal of the corporation, and affix such seal to all such instruments properly executed as may require it, and shall have such other duties and powers as may be prescribed or determined from time to time by the board of directors or by the president if the board does not do so.

(f) Treasurer. The treasurer, subject to the order of the board of directors, shall have the care and custody of the moneys, funds, valuable papers and documents of the corporation (other than his own bond, if any, which shall be in the custody of the president), and shall have, under the supervision of the board of directors, all the powers and duties commonly incident to his office. He shall deposit all funds of the corporation in such bank or banks, trust company or trust companies, or with such firm or firms doing a banking business as may be designated by the board of directors or by the president if the board does not do so. He may endorse, with the co-signature of either a president, chief executive officer or the chief operating officer, for deposit or collection all checks, notes, etc., payable to the corporation or to its order. He shall keep

accurate books of account of the corporation's transactions, which shall be the property of the corporation, and together with all its property in his possession, shall be subject at all times to the inspection and control of the board of directors. The treasurer shall be subject in every way to the order of the board of directors, and shall render to the board of directors and/or the president of the corporation, whenever they may require it, an account of all his transactions and of the financial condition of the corporation. In addition to the foregoing, the treasurer shall have such duties as may be prescribed or determined from time to time by the board of directors or by the president if the board does not do so.

3. Delegation of authority. The board of directors may at any time delegate the powers and duties of any officer for the time being to any other officer, director or employee.

4. Compensation. The compensation of the chairman of the board, the president, all vice presidents, the secretary and the treasurer shall be fixed by the board of directors, and the fact that any officer is a director shall not preclude him from receiving compensation or from voting upon the resolution providing the same.

ARTICLE IV

Resignations, Vacancies and Removals

1. Resignations. Any director or officer may resign at any time by giving written notice thereof to the board of directors, the president or the secretary. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of any resignation shall not be necessary to make it effective.

2. Vacancies. (a) Directors. When the office of any director becomes vacant or unfilled whether by reason of death, resignation, removal, increase in the authorized number of directors or otherwise, such vacancy or vacancies may be filled by the remaining director or directors, although less than a quorum. Any director so elected by the board shall serve until the election and qualification of his successor or until his earlier resignation or removal as provided in these By-laws. The directors may also reduce their authorized number by the number of vacancies in the board, provided such reduction does not reduce the board to less than the minimum authorized by the certificate of incorporation or the laws of Delaware.

(b) Officers. The board of directors may at any time or from time to time fill any vacancy among the officers of the corporation.

3. Removals. (a) Directors. Except as may otherwise be prohibited or restricted under the laws of Delaware, the stockholders may, at any meeting called for the purpose or by consent of the stockholders in lieu of a meeting, remove any director from office, with or without cause, and may elect his successor. Except as may

otherwise be prohibited or restricted under the laws of Delaware, the board of directors at any meeting called for the purpose by vote of a majority of directors then in office may remove from office for cause any director and may elect his successor, and by similar vote may remove from office without cause any director elected by the board, and may elect his successor.

(b) Officers. Subject to the provisions of any validly existing agreement, the board of directors may at any meeting remove from office any officer by vote of a majority of directors then in office, with or without cause, and may elect or appoint a successor; provided that if action is to be taken to remove the president the notice of meeting or waiver of notice thereof shall state that one of the purposes thereof is to consider and taken action on his removal.

ARTICLE V

Capital Stock

1. Certificate of stock. Every stockholder shall be entitled to a certificate or certificates for shares of the capital stock of the corporation in such form as may be prescribed or authorized by the board of directors, duly numbered and setting forth the number and kind of shares represented thereby. Such certificates shall be signed by the chairman of the board, the president or a vice president and by the treasurer or an assistant treasurer or by the secretary or an assistant secretary. Any or all of such signatures may be in facsimile if and to the extent authorized under the laws of Delaware.

In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate has ceased to be such officer, transfer agent or registrar before the certificate has been issued, such certificate may nevertheless be issued and delivered by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

2. Transfer of stock. Shares of the capital stock of the corporation shall be transferable only upon the books of the corporation upon the surrender of the certificate or certificates properly assigned and endorsed for transfer but subject to any restrictions on transfer as may be agreed upon in a stockholders agreement as may be amended from time to time by the corporation and/or among its shareholders. If the corporation has a transfer agent or agents or transfer clerk and registrar of transfers acting on its behalf, the signature of any officer or representative thereof may be in facsimile.

The board of directors may appoint a transfer agent and one or more co-transfer agents and a registrar and one or more co-registrars of transfer and may make or authorize the transfer agents to make all such rules and regulations deemed expedient concerning the issue, transfer and registration of shares of stock.

3. Record dates. (a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix in advance a record date which, in the case of a meeting, shall be not less than the minimum nor more than the maximum number of days prior to the scheduled date of such meeting permitted under the laws of Delaware and which, in the case of any other action, shall be not more than the maximum number of days prior to any such action permitted by the laws of Delaware.

(b) If no such record date is fixed by the board, the record date shall be that prescribed by the laws of Delaware.

(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to an adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

4. Lost certificates. In case of loss or mutilation or destruction of a stock certificate, a duplicate certificate may be issued upon such terms as may be determined or authorized by the board of directors or by the president if the board of directors does not do so.

ARTICLE VI

Fiscal Year, Bank Deposits, Checks, etc.

1. Fiscal Year. The fiscal year of the corporation shall commence or end at such time as the board of directors may designate.

2. Bank deposits, checks, etc. The funds of the corporation shall be deposited in the name of the corporation or of any division thereof in such banks or trust companies in the United States or elsewhere as may be designated from time to time by the board of directors, or by such officer or officers as the board of directors may authorize to make such designations.

All checks, drafts or other orders for the withdrawal of funds from any bank account shall be signed by such person or persons as may be designated from time to time by the board of directors or as may be designated by an officer or officers authorized by the board of directors to make such designations. The signatures on checks, drafts or other orders for the withdrawal of funds may be in facsimile if authorized in the designation.

ARTICLE VII

Books and Records

1. Place of keeping books. Unless otherwise expressly required by the laws of Delaware, the books and records of the corporation may be kept outside of Delaware.

2. Examination of books. Except as may otherwise be provided by the laws of Delaware, the certificate of incorporation or these By-laws, the board of directors shall have power to determine from time to time whether and to what extent and at what times and places and under what conditions any of the accounts, records and books of the corporation are to be open to the inspection of any stockholder. No stockholder shall have any right to inspect any account or book or document of the corporation except as prescribed by statute or authorized by express resolution of the stockholders or of the board of directors.

ARTICLE VIII

Notices

1. Requirements of notice. Whenever notice is required to be given by statute, the certificate of incorporation or these By-laws, it shall not mean personal notice unless so specified, but such notice may be given in writing by transmission of notice to the person's e-mail address or by posting notice depositing the same in a post office, letter box, or mail chute, postpaid, in either case addressed to the person to whom such notice is directed at the address or e-mail address of such person on the records of the corporation, and such notice shall be deemed given at the time when the same shall be thus mailed or e-mailed.

2. Waivers. Any stockholder, director or officer may, in writing or by telegram or cable, at any time waive any notice or other formality required by statute, the certificate of incorporation or these By-laws. Such waiver of notice, whether given before or after any meeting or action, shall be deemed equivalent to notice. Presence of a stockholder either in person or by proxy at any stockholders' meeting and presence of any director at any meeting of the board of directors shall constitute a waiver of such notice as may be required by any statute, the certificate of incorporation or these By-laws.

ARTICLE IX

Seal

The corporate seal of the corporation shall consist of two concentric circles between which shall be the name of the corporation and in the center of which shall be inscribed "Corporate Seal, Delaware."

ARTICLE X

Powers of Attorney

The board of directors may authorize one or more of the officers of the corporation to execute powers of attorney delegating to named representatives or agents power to represent or act on behalf of the corporation, with or without power of substitution.

In the absence of any action by the board of directors, the president, any vice president, the secretary or the treasurer of the corporation may execute for and on behalf of the corporation waivers of notice of stockholders' meetings and proxies for such meetings in any company in which the corporation may hold voting securities.

ARTICLE XI

Indemnification of Directors and Officers

1. Definitions. As used in this article, the term "person" means any past, present or future director or officer of the corporation or a designated officer of an operating division of the corporation.

2. Indemnification granted. The corporation shall indemnify, to the full extent and under the circumstances permitted by the Delaware General Corporation Law of the State of Delaware in effect from time to time, any person as defined above, made or threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer of the corporation or designated officer of an operating division of the corporation, or is or was an employee or agent of the corporation as a director, officer, employee or agent of another company or other enterprise in which the corporation should own, directly or indirectly, an equity interest or of which it may be a creditor.

This right of indemnification shall not be deemed exclusive of any other rights to which a person indemnified herein may be entitled by By-law, agreement, vote of stockholders or disinterested directors or otherwise, and shall continue as to a person who has ceased to be a director, officer, designated officer, employee or agent and shall inure to the benefit of the heirs, executors, administrators and other legal representatives of such person. It is not intended that the provisions of this article be applicable to, and they are not to be construed as granting indemnity with respect to, matters as to which indemnification would be in contravention of the laws of Delaware or of the United States of America whether as a matter of public policy or pursuant to statutory provision.

3. Miscellaneous. The board of directors may also on behalf of the corporation grant indemnification to any individual other than a person defined herein to such extent and in such manner as the board in its sole discretion may from time to time and at any time determine.

ARTICLE XII

Amendments

These By-laws may be amended or repealed either:

(a) at any meeting of stockholders at which a quorum is present by vote of a majority of the number of shares of stock entitled to vote present in person or by proxy at such meeting as provided in Article I Sections 5 and 6 of these By-laws, or

(b) at any meeting of the board of directors by a majority vote of the directors then in office; provided the notice of such meeting of stockholders or directors or waiver of notice thereof contains a statement of the substance of the proposed amendment or repeal.

Exhibit 10.1

SUPERNUS PHARMACEUTICALS, INC.
2005 STOCK PLAN, AS OF DECEMBER 22, 2005
(PURSUANT TO BOARD RESOLUTION
AND SHAREHOLDER CONSENT AS OF DECEMBER 21, 2005)

1. Purpose

The purpose of this plan (this "Plan") is to secure for Supernus Pharmaceuticals, Inc. (the "Company"), and its shareholders the benefits arising from capital stock ownership by employees, officers and directors of, and consultants or advisors to, the Company and its parent and subsidiary corporations who are expected to contribute to the Company's future growth and success. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in Sections 424(e) and 424(f) of the Internal Revenue Code, as amended or replaced from time to time (the "Code"). Those provisions of this Plan which make express reference to Section 422 of the Code shall apply only to Incentive Stock Options (as that term is defined in this Plan).

2. Type of Options and Grants; Administration

(a) Types of Options. Options granted pursuant to this Plan ("Options") shall be authorized by the board of directors of the Company (the "Board of Directors"), or the Committee, as defined below, and may be either incentive stock options issued in accordance with Section 422 of the Code ("Incentive Stock Options") or non-statutory options which are not intended to meet the requirements of Section 422 of the Code ("Non-Qualified Options").

(b) Purchase Rights. Pursuant to this Plan, eligible persons may be granted opportunities to make direct purchases of the Company's Common Stock ("Purchase Rights"). Purchase Rights shall be authorized by the Board of Directors or the Committee, as defined below.

(c) Awards. Pursuant to this Plan, eligible persons may be granted awards of the Company's common stock ("Awards"). Awards shall be authorized by the Board of Directors or the Committee, as defined below.

(d) Granting of An Option, Purchase Right or Award. Options, Purchase Rights and Awards may be granted under this Plan at any time on or after December 22, 2005 and prior to December 23, 2015, but in no event, unless otherwise decided by the Board, shall grants made during this time period have an exercise period greater than ten years commencing from the date of grant. The date of grant of an Option, a Purchase Right or an Award under this Plan will be the date specified by the Board of Directors at the time it grants such Option, Purchase Right or Award, except that such date shall not be prior to the date on which the Board of Directors approves the grant.

(e) Administration.

(i) This Plan will be administered by the Board of Directors, and its construction and interpretation of the terms and provisions of this Plan shall be final and conclusive. The Board of Directors may in its sole discretion (A) grant options to purchase shares of the Company's Common Stock, and issue shares upon exercise of such Options as provided in this Plan, (B) grant Purchase Rights and issue shares upon the exercise of such Purchase Rights, and (C) grant Awards and issue shares pursuant to such Awards. Subject to the express provisions of this Plan, the Board of Directors shall have authority to construe the respective option agreements and this Plan; to prescribe, amend and rescind rules and regulations relating to this Plan; to determine the terms and provisions of the respective option agreements, which need not be identical; and to make all other determinations, in the judgment of the Board of Directors, that may be necessary or desirable for the administration of this Plan. The Board of Directors may correct any defect or supply any omission or reconcile any inconsistency in this Plan or in any option agreement, purchase agreement or other agreement in the manner and to the extent it shall deem expedient to carry this Plan into effect; and it shall be the sole and final judge of such expediency. No director or person acting pursuant to authority delegated by the Board of Directors shall be liable for any action or determination under this Plan made in good faith. To the full extent permitted by or consistent with applicable laws or regulations (including, without limitation, applicable state law and Rule 16b-3 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act") or any successor rule ("Rule 16b-3")), the Board of Directors may delegate any or all of its powers under this Plan to a committee (the "Committee") appointed by the Board of Directors. If a Committee is so appointed, all references in this Plan to the Board of Directors shall mean and relate to such Committee.

(ii) Committee Action. The Committee may select one of its members as its chair, and shall hold meetings at such time and places as it may determine. Acts by a majority of the members of the Committee, or acts reduced to or approved in writing by a majority of the members of the Committee, shall be valid acts of the Committee. All references in this Plan to the Committee shall mean the Board of Directors if no Committee has been appointed. From time to time, the Board of Directors may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies however caused, or remove all members of the Committee and thereafter directly administer this Plan.

(iii) Grant of Options, Purchase Rights and Awards to Members of the Board of Directors. Options, Purchase Rights and Awards may be granted to members of the Board of Directors consistent with the provisions of paragraph 2(e)(i), if applicable. All grants of Options, Purchase Rights and Awards made to members of the Board of Directors shall be made in all other respects in accordance with the provisions of this Plan applicable to other eligible persons. Consistent with the provisions of paragraph 2(e)(i), members of the Board of Directors who are either (A) eligible for Options, Purchase Rights or Awards or (B) have been granted Options, Purchase Rights or Awards may vote on any matters affecting the administration of this Plan or on the grant, other

than a grant to himself, of any Option, Purchase Right or Award. Notwithstanding that, any such member may be counted in determining the existence of a quorum at any meeting of the Board of Directors during which action may be taken with respect to the grant to him of any Option, Purchase Right or Award.

(f) Applicability of Rule 16b-3. Those provisions of this Plan which make express reference to Rule 16b-3 shall apply only to those persons who are required to file reports under Section 16(a) of the Exchange Act (a "Reporting Person").

3. Eligibility

(a) General. Options, Purchase Rights and Awards may be granted to persons who, at the time of grant or award, are employees, officers or directors of, or consultants or advisors to, the Company, provided that the class of employees eligible to receive Incentive Stock Options shall be limited to employees of the Company eligible to receive Incentive Stock Options under the Code. A person who has been granted an Option, Purchase Right or Award, if he or she is otherwise eligible, may be granted additional Options, Purchase Rights or Awards if the Board of Directors shall so determine.

(b) Grants to Directors and Officers. From and after the registration of the Common Stock of the Company under the Exchange Act, an Option, Purchase Right or Award may be granted to a director or an officer of the Company (as the terms "director" and "officer" are defined for purposes of Rule 16b-3) only if the timing of such grant, the exercise price or the purchase price of such Option, Purchase Right or Award and the number of shares subject to such Option, Purchase Right or Award is determined either (A) by the full Board of Directors, or (B) by a Committee that is composed solely of two or more Non-Employee Directors (as hereinafter defined). For the purposes of this Plan, a director shall be deemed to be a "Non- Employee Director" only if such person qualifies as a "Non-Employee Director" within the meaning of Rule 16b-3, as such term is interpreted from time to time.

4. Stock Subject to Plan

Subject to adjustment as provided in paragraph 15, the maximum number of shares of Common Stock of the Company which may be issued and sold under this Plan is 8,000,000 shares. If an Option, Purchase Right or Award granted under this Plan shall expire or terminate for any reason without having been exercised in full, the unpurchased shares subject to such Option, Purchase Right or Award shall be available for subsequent grants under this Plan. If shares issued upon exercise of an Option, Purchase Right or Award under this Plan are accepted by the Company when tendered in payment of the exercise price of an Option, Purchase Right or Award granted under this Plan, such shares shall be available for subsequent grants under this Plan, except that in no event shall (A) the total number of shares issued pursuant to the exercise of Incentive Stock Options under this Plan, on a cumulative basis, exceed the maximum number of shares authorized for issuance under this Plan exclusive of shares made available for issuance pursuant to this sentence or (B) the total number of shares issued pursuant to the exercise of Options, Purchase Rights or Awards by Reporting Persons, on a cumulative basis, exceed the

maximum number of shares authorized for issuance under this Plan exclusive of shares made available for issuance pursuant to this sentence.

5. Forms of Agreements

As a condition to the grant of an Option, Purchase Right or Award under this Plan, each recipient of such grant shall execute an option agreement, purchase agreement, stock restriction agreement or other agreement in such form not inconsistent with this Plan as may be approved by the Board of Directors. Such agreements may differ among recipients.

6. Purchase Price

(a) General. The purchase price per share of stock deliverable upon the exercise of an Option, Purchase Right or Award shall be determined by the Board of Directors, provided that, in the case of an Incentive Stock Option, the exercise price shall not be less than 100% of the fair market value of such stock, as determined by the Board of Directors, at the time of grant of such option, or less than 110% of such fair market value in the case of options described in paragraph 11(b).

(b) Payment of Purchase Price. Options, Purchase Rights or Awards granted under this Plan may provide for the payment of the exercise price by delivery of cash or a check to the order of the Company in an amount equal to the exercise price of such Options, Purchase Rights or Awards, or, to the extent provided in the applicable option agreement, (A) by delivery to the Company of shares of Common Stock of the Company already owned by the grant holder having a fair market value equal in amount to the exercise price of the Options, Purchase Rights or Awards being exercised, (B) at the discretion of the Board of Directors and consistent with applicable law, through the delivery of an assignment to the Company of a sufficient amount of the proceeds from the sale of the Common Stock acquired upon exercise of an Option, Purchase Right or Award and an authorization to the broker or selling agent to pay that amount to the Company, which sale shall be at the grant holder's direction at the time of exercise, (C) by any other means (including, without limitation, by delivery of a promissory note of the grant holder payable on such terms as are specified by the Board of Directors) which the Board of Directors determines are consistent with the purpose of this Plan and with applicable laws and regulations (including, without limitation, the provisions of Rule 16b-3 and Regulation T promulgated by the Federal Reserve Board) or (D) by any combination of such methods of payment. The fair market value of any shares of Common Stock or other non-cash consideration which may be delivered upon exercise of an Option, Purchase Right or Award shall be determined by the Board of Directors.

(c) Determination of Fair Market Value. If, at the time an Option, Purchase Right or Award is granted, Common Stock is publicly traded, "fair market value" shall be determined as of the date of grant or, if the prices or quotes discussed in this sentence are unavailable for such date, the last business day for which such prices or quotes are available prior to the date such Option, Purchase Right or Award is granted; and shall mean (A) the average (on that date) of the high and low prices of the Common Stock on the principal national securities exchange on which

the Common Stock is traded, if the Common Stock is then traded on a national securities exchange; or (B) the last reported sale price (on that date) of the Common Stock on the Nasdaq Stock Market, if the Common Stock is not then traded on a national securities exchange; or (C) the average of the closing bid and asked prices last quoted (on that date) by an established quotation service for over-the-counter securities, if the Common Stock is not reported on the Nasdaq Stock Market. If the Common Stock is not publicly traded at the time an Option, Purchase Right or Award is granted, "fair market value" shall be deemed to be the fair value of the Common Stock as determined by the Board of Directors after taking into consideration all factors which it deems appropriate, including, without limitation, recent sale and offer prices of the Company's capital stock in private transactions negotiated at arm's length.

7. Exercise Period

Each Option, Purchase Right or Award and all rights thereunder shall expire on such date as shall be set forth in the applicable agreement, except that, in the case of an Incentive Stock Option, such date shall not be later than ten years after the date on which the option is granted. In all cases, options shall be subject to earlier termination as provided in this Plan.

8. Exercise of Options, Purchase Rights or Awards

Each Option, Purchase Right or Award granted under this Plan shall be exercisable either in full or in installments at such time or times and during such period as shall be set forth in the agreement evidencing such Option, Purchase Right or Award, subject to the provisions of this Plan.

9. Nontransferability of Options

Incentive Stock Options, and all other Options granted to Reporting Persons, shall not be assignable or transferable by the grant holder, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the life of the grant holder, shall be exercisable only by the grant holder, except that Non-Qualified Options may be transferred pursuant to a qualified domestic relations order (as defined in the Code).

10. Effect of Termination of Employment or Other Relationship

(a) Except as provided in paragraph 11(d) or 10(b) as to Incentive Stock Options, and subject to the provisions of this Plan, the Board of Directors shall determine the period of time during which a grant holder may exercise an Option, Purchase Right or Award following (A) the termination of the holder's employment or other relationship with the Company or (B) the death or disability of the holder. Such periods shall be set forth in the agreement evidencing such Option, Purchase Right or Award.

(b) Subject to paragraphs 11(d) and 25, if a holder of an Incentive Stock Option ceases to be employed by the Company other than by reason of death or disability, as defined in paragraph 11(d), no further installments of his Incentive Stock Options shall become exercisable; and his Incentive Stock Options shall terminate after the passage of three (3) months from the date of

termination of his employment, but in no event later than on their specified expiration dates, except to the extent that such Incentive Stock Options (or unexercised installments thereof) have been converted into Non-Qualified Options pursuant to paragraph 22. Employment shall be considered as continuing uninterrupted during any bona fide leave of absence (such as those attributable to illness, military obligations or governmental service), provided that such leave does not exceed ninety (90) days or such longer period during which such holder's right to reemployment is guaranteed by statute. A bona fide leave of absence with the written approval of the Board of Directors shall not be considered an interruption of employment under this Plan, provided that such written approval contractually obligates the Company to continue the employment of such holder after the approved period of absence. Incentive Stock Options granted under this Plan shall not be affected by any change of employment within or among the Company, so long as such holder continues to be an employee of the Company. Nothing in this Plan shall be deemed to give any holder of any Option, Purchase Right or Award the right to be retained in employment or other service by the Company for any period of time.

11. Incentive Stock Options

Options granted under this Plan which are intended to be Incentive Stock Options shall be subject to the following additional terms and conditions:

(a) Express Designation. All Incentive Stock Options granted under this Plan shall be specifically designated as such, at the time of grant, in the option agreement covering such Incentive Stock Options.

(b) 10% Shareholder. If any employee to whom an Incentive Stock Option is to be granted under this Plan is the owner, at the time of the grant of such option, of stock possessing more than 10% of the total combined voting power of all classes of stock of the Company (after taking into account the attribution of stock ownership rules of Section 424(d) of the Code), then (A) the purchase price per share of the Common Stock subject to such Incentive Stock Option shall not be less than 110% of the fair market value of one share of Common Stock at the time of grant; and (B) the option exercise period shall not exceed five years from the date of grant.

(c) Dollar Limitation. For so long as the Code shall so provide, Options granted to any employee under this Plan (and any other incentive stock option plans of the Company) which are intended to constitute Incentive Stock Options shall not constitute Incentive Stock Options to the extent that such Options, in the aggregate, become exercisable for the first time in any one calendar year for shares of Common Stock with an aggregate fair market value (determined as of the respective date or dates of grant) of more than $100,000.

(d) Termination of Employment, Death or Disability. No Incentive Stock Option may be exercised unless, at the time of such exercise, the grant holder is, and has been continuously since the date of grant of his or her Option, employed by the Company, except that (A) an Incentive Stock Option may be exercised within the period of three (3) months after the date the grant holder ceases to be an employee of the Company (or within such lesser period as may be specified in the applicable option agreement), although the agreement with respect to

such Option may designate a longer exercise period and may provide that the exercise after such three-month period shall be treated as the exercise of a Non-Qualified Option under this Plan; (B) if the grant holder dies while in the employ of the Company, or within three (3) months after the grant holder ceases to be such an employee, the Incentive Stock Option may be exercised by the person to whom it is transferred by will or the laws of descent and distribution within the period of twelve (12) months after the date of death (or within such lesser period as may be specified in the applicable option agreement); and (C) if the grant holder becomes disabled while in the employ of the Company, the Incentive Stock Option may be exercised within the period of one year after the date the grant holder ceases to be such an employee because of such disability (or within such lesser period as may be specified in the applicable option agreement). For the purposes of this Plan, the term "disabled" or "disability" shall mean "permanent and total disability" as defined in Section 22(e)(3) of the Code. For all purposes of this Plan and any Option granted hereunder, "employment" shall be defined in accordance with the provisions of Section 1.421-7(h) of the Income Tax Regulations (or any successor regulations). Notwithstanding the foregoing provisions, no Incentive Stock Option may be exercised after its expiration date.

12. Additional Provisions

(a) Additional Provisions. The Board of Directors, in its sole discretion, may include additional provisions in agreements covering Options, Purchase Rights or Awards granted under this Plan, including without limitation restrictions on transfer, repurchase rights, commitments to pay cash bonuses, to make, arrange for or guaranty loans or to transfer other property to grant holders upon exercise of Options, Purchase Rights or Awards, or such other provisions as shall be determined by the Board of Directors; provided that such additional provisions shall not be inconsistent with any other term or condition of this Plan and that such additional provisions shall not cause any Incentive Stock Option granted under this Plan to fail to qualify as an Incentive Stock Option within the meaning of Section 422 of the Code.

(b) Acceleration, Extension, Etc. The Board of Directors, in its sole discretion, may (A) accelerate the date or dates on which all or any particular Option, Purchase Right or Award granted under this Plan may be exercised or (B) extend the dates during which all, or any particular, Option, Purchase Right or Award granted under this Plan may be exercised, provided that no such extension shall be permitted (i) if it would cause this Plan to fail to comply with Section 422 of the Code or (ii) if it would cause such Option, Purchase Right or Award to fail to comply with Rule 16b-3.

13. General Restrictions

(a) Investment Representations. The Company may require any holder of a grant of an Option, Purchase Right or Award, as a condition of exercising such Option, Purchase Right or Award, to give written assurances, in substance and form satisfactory to the Company, to the effect that such holder is acquiring the Common Stock subject to the Option, Purchase Right or Award for his or her own account for investment and not with any present intention of selling or otherwise distributing the same, and to such other effect as the Company deems necessary or

appropriate to comply with federal and applicable state securities laws or to comply with covenants or representations made by the Company in connection with any public offering of its Common Stock.

(b) Compliance With Securities Laws. Each Option, Purchase Right or Award shall be subject to the requirement that if counsel to the Company shall determine at any time that the listing, registration or qualification of the shares subject to such Option, Purchase Right or Award upon any securities exchange or under any state or federal law, or the consent or approval of any governmental or regulatory body, or the disclosure of non-public information or the satisfaction of any other condition is necessary as a condition of, or in connection with, the issuance or purchase of shares thereunder, such Option, Purchase Right or Award may not be exercised, in whole or in part, unless such listing, registration, qualification, consent, approval, disclosure or satisfaction shall have been effected or obtained on conditions acceptable to the Board of Directors. Nothing herein shall be deemed to require the Company to apply for or to obtain such listing, registration, qualification, consent or approval or to make such disclosure or to satisfy such condition.

(c) Stock Restrictions on Underlying Stock.

Each Option, Purchase Right or Award shall be subject to the requirement that upon exercise, the underlying security exchanged for the Option, Purchase Right or Award shall be subject to certain restrictions, including but not limited to restrictions on transfer, drag along rights, and rights of first refusal as may be set forth in the by-laws of the Company and as more specifically set forth in a certain Stockholders Voting Agreement and certain Stock Restriction Agreement, by and between the Company and its shareholders, each dated on or about December 22, 2005 and as may be amended from time to time in the future. Each eligible person receiving an Option, Purchase Right or Award hereunder, agrees to be bound by these restrictions and further agrees, upon the request of the Company to execute any further documentation necessary to evidence said agreement including but not limited to executing an instrument of accession, as shall be provided by the Company, to each of the Stockholders Voting Agreement and Stock Restriction Agreement. An eligible person's failure to execute same, at the Company's request, shall cause the respective Option, Purchase Award or Award, and/or the underlying security to be immediately null and void. The Company shall be free to place a legend on the underlying security specifying these restrictions.

14. Rights as a Shareholder

The holder of an Option, Purchase Right or Award shall have no rights as a shareholder with respect to any shares covered by the Option, Purchase Right or Award (including, without limitation, any rights to receive dividends or non-cash distributions with respect to such shares) until the date of issue of a stock certificate to him or her for such shares. No adjustment shall be made for dividends or other rights for which the record date is prior to the date such stock certificate is issued.

15. Adjustment Provisions for Recapitalizations and Related Transactions

(a) General. If, through or as a result of any merger, consolidation, sale of all or substantially all of the Company's assets, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar transaction, (A) the outstanding shares of Common Stock are increased, decreased or exchanged for a different number or kind of shares or other securities of the Company, or (B) additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock or other securities, an appropriate and proportionate adjustment may be made in (x) the maximum number and kind of shares reserved for issuance under this Plan, (y) the number and kind of shares or other securities subject to any then outstanding Options, Purchase Rights or Awards under this Plan, and (z) the price for each share subject to any then outstanding Options, Purchase Rights or Awards under this Plan, without changing the aggregate purchase price as to which such Options, Purchase Rights or Awards remain exercisable. Notwithstanding the foregoing, no adjustment shall be made pursuant to this paragraph 15 if such adjustment would cause this Plan to fail to comply with Section 422 of the Code or would cause any Option, Purchase Right or Award to fail to comply with Rule 16b-3.

(b) Board Authority to Make Adjustments. Any adjustments under this paragraph 15 will be made by the Board of Directors, whose determination as to what adjustments, if any, will be made and the extent thereof will be final, binding and conclusive. No fractional shares will be issued under this Plan on account of any such adjustments.

16. Merger, Consolidation, Asset Sale, Liquidation, etc.

(a) General. In the event of a consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding shares of Common Stock are exchanged for securities, cash or other property of any other corporation or business entity (in each case, a "Sale Transaction") or in the event of a liquidation of the Company, the Board of Directors of the Company, or the board of directors of any corporation assuming the obligations of the Company may take, in its discretion, any one or more of the following actions as to outstanding Options, Purchase Rights or Awards: (A) provide that such Options, Purchase Rights or Awards shall be assumed, or equivalent Options, Purchase Rights or Awards shall be substituted, by the acquiring or succeeding corporation (or an affiliate thereof), provided that any such Options substituted for Incentive Stock Options shall meet the requirements of Section 424(a) of the Code, (B) upon written notice to the grant holder provide that all unexercised Options, Purchase Rights or Awards will terminate immediately prior to the consummation of such Sale Transaction or liquidation unless exercised by the grant holder within a specified period following the date of such notice, (C) terminate all Options, Purchase Rights and Awards in exchange for a cash payment equal to the excess of the fair market value of the shares subject to such Options, Purchase Rights and Awards (to the extent then exercisable) over the exercise price thereof, (D) terminate all Options, Purchase Rights and Awards in exchange for the right to participate in any stock option or other employee benefit plan of any successor corporation (giving proper credit to any grantee of an Option, Purchase Right or Award for that portion of any Option, Purchase Right and Award which has otherwise vested and become exercisable prior to any such Sale

Transaction (E) in the event of a merger under the terms of which holders of the Common Stock of the Company will receive upon consummation thereof a cash payment for each share surrendered in the merger (the "Merger Price"), make or provide for a cash payment to the recipient equal to the difference between (x) the Merger Price times the number of shares of Common Stock subject to such outstanding Options, Purchase Rights or Awards (to the extent then exercisable at prices not in excess of the Merger Price) and (y) the aggregate exercise price of all such outstanding Options, Purchase Rights or Awards in exchange for the termination of such Options, Purchase Rights or Awards, or (F) provide that all or any portion of outstanding Options, Purchase Rights or Awards shall become exercisable in full immediately prior to such Sale Transaction or liquidation.

(b) Substitute Options, Purchase Rights or Awards. The Company may grant Options, Purchase Rights or Awards under this Plan in substitution for Options, Purchase Rights or Awards held by employees of another corporation who become employees of the Company or a subsidiary of the Company as the result of a merger or consolidation of the employing corporation with the Company or a subsidiary of the Company, or as a result of the acquisition by the Company or by one of its subsidiaries of property or stock of the employing corporation. The Company may direct that substitute Options, Purchase Rights or Awards be granted on such terms and conditions as the Board of Directors considers appropriate in the circumstances.

(c) Provisions Of This Paragraph 16 Not In Limitation of Specific Terms In Option, Purchase Right or Award Instruments. Notwithstanding subparagraphs (a) and (b) of this paragraph 16, if an instrument evidencing an Option, Purchase Right or Award shall provide for a result that is more favorable to the holder of such instrument than the actions permitted to be taken by the Board of Directors pursuant to subparagraph 16(a) upon the occurrence of any of the events set forth therein, such instrument shall control. Without limiting the foregoing but subject to the last sentence of subparagraph 16(a), the Board of Directors, in its discretion, may take any action that is more favorable to the holder of an Option, Purchase Right or Award than the provision which is provided in the instrument evidencing such Option, Purchase Right or Award.

17. Modification of Incentive Stock Options

Notwithstanding paragraph 15 or 16, the Board of Directors may refrain, in its sole discretion, from making any adjustments made pursuant to paragraph 15 or 16 with respect to Incentive Stock Options if the Board of Directors, after consulting with counsel for the Company, shall determine that such adjustments would constitute a "modification" of such Incentive Stock Options (as that term is defined in Section 424 of the Code) or would cause any adverse tax consequences for the holders of such Incentive Stock Options.

18. Dissolution or Liquidation

Except as otherwise provided in paragraph 16, if a dissolution or liquidation of the Company shall be proposed, each Option, Purchase Right and Award will terminate immediately

prior to the consummation of such proposed action or at such other time and subject to such other conditions as shall be determined by the Board of Directors.

19. Issuances of Securities

Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares subject to Options, Purchase Rights or Awards. No adjustments shall be made for dividends paid in cash or in property other than securities of the Company.

20. Fractional Shares

No fractional shares shall be issued under this Plan; and the holder of an Option, Purchase Right or Award shall receive from the Company cash in lieu of the fair market value of such fractional shares.

21. Conditions and Restrictions

(a) If any person or entity owning restricted Common Stock obtained by exercise of an Option, Purchase Right or Award made hereunder receives shares or securities or cash in connection with a corporate transaction described in paragraph 15 or 16 as a result of owning such restricted Common Stock, such shares or securities or cash shall be subject to all of the conditions and restrictions applicable to the restricted Common Stock including but not limited to those restrictions set forth in Paragraph 13 herein with respect to which such shares or securities or cash were issued, unless otherwise determined by the Board of Directors.

(b) Each shareholder agrees severally and not jointly, in connection with the registration of the Company's initial public offering ("IPO") that, upon the request of the Company and the underwriters managing such underwritten offering, he or she will not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities without the prior written consent of the Company, for such period of time (not to exceed one hundred and eighty (180) days) from the effective date of such registration as the Company may specify.

22. Conversion of Incentive Stock Options into Non-Qualified Options; Termination of Incentive Stock Options

The Board of Directors, at the written request or with the written consent of any holder of an Incentive Stock Option, may take such actions, in its discretion, as may be necessary to convert such holder's Incentive Stock Options (or any installments or portions of installments thereof) that have not been exercised on the date of conversion into Non-Qualified Options at any time prior to the expiration of such Incentive Stock Options, regardless of whether the holder is an employee of the Company at the time of such conversion. Such actions may include, but shall not be limited to, extending the exercise period or reducing the exercise price of the

appropriate installments of such Incentive Stock Options. At the time of such conversion, the Board of Directors (with the consent of the grantee) may impose such conditions on the exercise of the resulting Non-Qualified Options as the Board of Directors in its discretion may determine, provided that such conditions shall not be inconsistent with this Plan. Nothing in this Plan shall be deemed to give any holder the right to have such holder's Incentive Stock Options converted into Non-Qualified Options, and no such conversion shall occur until and unless the Board of Directors shall take appropriate action.

23. Governmental Regulation

The Company's obligation to sell and deliver shares of the Common Stock under this Plan is subject to the approval of any governmental authority required in connection with the authorization, issuance or sale of such shares.

24. Notice to Company of Disqualifying Disposition

By accepting an Incentive Stock Option granted under this Plan, each holder of an Incentive Stock Option thereby agrees to notify the Company in writing immediately after such holder makes a Disqualifying Disposition of any Common Stock acquired pursuant to the exercise of an Incentive Stock Option. Generally, a Disqualifying Disposition is any disposition (including any sale) of such Common Stock occurring on or before the later of the date (A) two years after the date the employee was granted the Incentive Stock Option, or (B) one year after the date the employee acquired Common Stock by exercising the Incentive Stock Option.

25. No Exercise of an Option, Purchase Right or Award if Engagement or Employment Terminated for Cause

If the employment of a holder of an Option, Purchase Right or Award is terminated for "Cause," any Option, Purchase Right or Award shall terminate on the date of such termination and such Option, Purchase Right or Award shall thereupon not be exercisable to any extent whatsoever. "Cause" is conduct by the holder, as determined by the Board of Directors, constituting one or more of the following: (A) gross misconduct which is materially injurious to the Company; or (B) the commission of an act of embezzlement, fraud or deliberate disregard of the rules or policies of the Company which results in material economic loss, damage or injury to the Company; or (C) the unauthorized disclosure of any trade secret or confidential information of the Company or any third party who has a business relationship with the Company or the violation of any noncompetition covenant or assignment of inventions obligation with the Company; or (D) the commission of any act which induces any customer or prospective customer of the Company to break a contract with the Company or to decline to do business with the Company; or (E) the conviction of a felony involving any financial impropriety or which would materially interfere with the holder's ability to perform his or her services for the Company or otherwise be injurious to the Company; or (F) the failure to perform in a material respect his or her employment obligations without proper cause. In making such determination, the Board of Directors shall act fairly and in utmost good faith. For the purposes of this

paragraph 25, termination of employment shall be deemed to occur when the grantee receives notice that his employment is terminated.

26. No Special Employment Rights

Nothing contained in this Plan or in any Option, Purchase Right or Award shall confer upon any grant holder any right with respect to the continuation of his or her employment by the Company or any right to interfere in any way or at any time with the Company's termination of such employment or the Company's increase or decrease of the compensation of such holder.

27. Other Employee Benefits

Except as to plans which by their terms include such amounts as compensation, the amount of any compensation deemed to be received by an employee as a result of the exercise of an Option, Purchase Right or Award or the sale of shares received upon such exercise will not constitute compensation with respect to which any other employee benefits of such employee are determined, including, without limitation, benefits under any bonus, pension, profit-sharing, life insurance or salary continuation plan, except as otherwise specifically determined by the Board of Directors.

28. Amendment of this Plan

(a) The Board of Directors, at any time and from time to time, may modify or amend this Plan in any respect, except that if at any time the approval of the shareholders of the Company is required under Section 422 of the Code or any successor provision with respect to Incentive Stock Options the Board of Directors may not effect such modification or amendment without such approval.

(b) The termination or any modification or amendment of this Plan shall not affect the rights of any grant holder under an Option, Purchase Right or Award without the consent of such holder. With the consent of the affected grant holder, the Board of Directors may amend outstanding agreements governing an Option, Purchase Right or Award in a manner not inconsistent with this Plan. The Board of Directors shall have the right to amend or modify (A) the terms and provisions of this Plan and of any outstanding Incentive Stock Options granted under this Plan to the extent necessary to qualify any or all such Options for such favorable federal income tax treatment (including deferral of taxation upon exercise) as may be afforded incentive stock options under Section 422 of the Code and (B) the terms and provisions of this Plan and of any outstanding Options, Purchase Rights or Awards to the extent necessary to qualify any or all such Options, Purchase Rights or Awards for an exemption under Rule 16b-3.

29. Withholding

(a) The Company shall have the right to deduct from payments of any kind otherwise due to any grant holder any federal, state or local taxes of any kind required by law to be withheld with respect to any shares issued upon exercise of Options, Purchase Rights or Awards under this Plan. Subject to the prior approval of the Company, which may be withheld by the

Company in its sole discretion, a grant holder may elect to satisfy such obligations, in whole or in part, (A) by causing the Company to withhold shares of Common Stock otherwise issuable pursuant to the exercise of an Option, Purchase Right or Award or (B) by delivering to the Company shares of Common Stock already owned by the holder. The shares so delivered or withheld shall have a fair market value equal to such withholding obligation. The fair market value of the shares used to satisfy such withholding obligation shall be determined by the Company as of the date that the amount of tax to be withheld is to be determined. A grant holder who has made an election pursuant to this paragraph 29(a) may only satisfy his or her withholding obligation with shares of Common Stock which are not subject to any repurchase, forfeiture, unfulfilled vesting or other similar requirements.

(b) Notwithstanding the foregoing, in the case of a Reporting Person, no election to use shares for the payment of withholding taxes shall be effective unless made in compliance with any applicable requirements of Rule 16b-3.

30. Cancellation and New Grant of Options, Purchase Rights or Awards, Etc.

The Board of Directors shall have the authority to effect, at any time and from time to time, with the consent of the affected grant holders, (A) the cancellation of any or all outstanding Options, Purchase Rights or Awards under this Plan and the grant in substitution therefor of new Options, Purchase Rights or Awards under this Plan covering the same or different numbers of shares of Common Stock and having an exercise price per share which may be lower or higher than the exercise price per share of the canceled Options, Purchase Rights or Awards or (B) the amendment of the terms of any and all outstanding Options, Purchase Rights or Awards under this Plan to provide an exercise price per share which is higher or lower than the then-current exercise price per share of such outstanding Options, Purchase Rights or Awards.

31. Effective Date and Duration of this Plan

(a) Effective Date. This Plan shall become effective when adopted by the Board of Directors, but no Incentive Stock Option granted under this Plan shall become exercisable unless and until this Plan shall have been approved by the Company's shareholders. If such shareholder approval is not obtained within twelve months after such adoption, no Options previously granted under this Plan shall be deemed to be Incentive Stock Options and no Incentive Stock Options shall be granted thereafter. Amendments to this Plan not requiring shareholder approval shall become effective when adopted by the Board of Directors; amendments requiring shareholder approval (as provided in paragraph 28) shall become effective when adopted by the Board of Directors, but no Incentive Stock Option granted after the date of such amendment shall become exercisable (to the extent that such amendment to this Plan was required to enable the Company to grant such Incentive Stock Option to a particular grant holder) unless and until such amendment shall have been approved by the Company's shareholders. If such shareholder approval is not obtained within twelve months of such adoption, any Incentive Stock Options granted on or after the date of such amendment shall terminate to the extent that such amendment to this Plan was required to enable the Company to grant such Option to a particular grant holder.

Subject to this limitation, Options, Purchase Rights or Awards may be granted under this Plan at any time after the effective date and before the date fixed for termination of this Plan.

(b) Termination. Unless sooner terminated in accordance with paragraph 16, this Plan shall terminate, with respect to Incentive Stock Options only, upon the earlier of (A) the close of business on the day next preceding the tenth anniversary of the date of its adoption, by the Board of Directors, or (B) the date on which all shares available for issuance under this Plan shall have been issued pursuant to the exercise or cancellation of Options granted under this Plan. Unless sooner terminated in accordance with paragraph 16, this Plan shall terminate with respect to Options, Purchase Rights or Awards which are not Incentive Stock Options on the date specified in (B) above. If the date of termination is determined under (A) above, then Options, Purchase Rights or Awards outstanding on such date shall continue to have force and effect in accordance with the provisions of the instruments evidencing such Options, Purchase Rights or Awards.

32. Provision for Foreign Participants

The Board of Directors, without amending this Plan, may modify Options, Purchase Rights or Awards granted to foreign nationals or persons employed outside the United States to take into account differences in laws, rules, regulations or customs of such foreign jurisdictions with respect to tax, securities, currency, employee benefit or other matters.

SUPERNUS PHARMACEUTICALS, INC.

INCENTIVE STOCK OPTION AGREEMENT

1. Grant of Option. , a Delaware corporation (the "Company") hereby grants to , an individual whose address is set forth below the optionee signature line (the "Optionee"), an option, pursuant to the Company's 2005 Stock Plan as of December 22, 2005 (the "Plan"), to purchase an aggregate of shares of common stock of the Company ("Common Stock") at a price of $. per share, purchasable as set forth in and subject to the terms and conditions of this option and the Plan. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in Sections 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the "Code").

2. Incentive Stock Option. This option is intended to qualify as an incentive stock option ("Incentive Stock Option") within the meaning of Section 422 of the Code. Any provision of this Agreement which conflicts with the requirements of qualification as an Incentive Stock Option under the Code is null and void to the extent of such conflict and any ambiguities shall be resolved so that this option qualifies as an Incentive Stock Option.

3. Exercise of Option and Provisions for Termination.

(a) Vesting Schedule. Except as otherwise provided in this Agreement, this option may be exercised as to the number of shares indicated opposite the respective dates on Exhibit A hereto ("Vested Shares"). This option may not be exercised with respect to any shares after the tenth anniversary of the date of grant (hereinafter the "Expiration Date").

(b) Exercise Procedure. Subject to the conditions set forth in this Agreement, this option shall be exercised by the Optionee's delivery of written notice of exercise to the Company, specifying the number of shares to be purchased and the purchase price to be paid therefor and accompanied by payment in full in accordance with Section 4. Such exercise shall be effective upon receipt by the Company of such written notice together with the required payment. The Optionee may purchase less than the number of shares covered hereby, provided that no partial exercise of this option may be for any fractional share or for less than one whole share.

(c) Continuous Employment Required. Except as otherwise provided in this Section 3, this option may not be exercised unless the Optionee, at the time he or she exercises this option, is, and has been at all times since the date of grant of this option, an employee of the Company. For all purposes of this option, (i) "employment" shall be defined in accordance with the provisions of Section 1.421-7(h) of the Income Tax Regulations or any successor regulations, and (ii) if this option shall be assumed or a new option substituted therefor in a transaction to which Section 424(a) of the Code applies, employment by such assuming or substituting

corporation (hereinafter called the "Successor Corporation") shall be considered for all purposes of this option to be employment by the Company.

(d) Exercise Period Upon Termination of Employment. If the Optionee ceases to be employed by the Company for any reason, then, except as provided in paragraphs (e) and (f) below, the right to exercise this option shall terminate three months after such cessation (but in no event after the Expiration Date), provided that this option shall be exercisable only to the extent that the Optionee was entitled to exercise this option on the date of such cessation. Notwithstanding the foregoing, if the Optionee, prior to the Expiration Date, materially violates any non-competition or confidentiality provisions of any agreement between the Optionee and the Company, the right to exercise this option shall terminate immediately upon such violation.

(e) Exercise Period Upon Death or Disability. If the Optionee dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Expiration Date while he or she is an employee of the Company, or if the Optionee dies within three months after the Optionee ceases to be an employee of the Company (other than as the result of a discharge for "cause" as specified in paragraph (f) below), this option shall be exercisable, within the period of one year following the date of death or disability of the Optionee (but in no event after the Expiration Date), by the Optionee or by the person to whom this option is transferred by will or the laws of descent and distribution; provided that this option shall be exercisable only to the extent that this option was exercisable by the Optionee on the date of his or her death or disability. Except as otherwise indicated by the context, the term "Optionee", as used in this option, shall be deemed to include the estate of the Optionee or any person who acquires the right to exercise this option by bequest or inheritance or otherwise by reason of the death of the Optionee.

(f) Termination for Cause. If the Optionee, prior to the Expiration Date, ceases his or her employment with the Company because he or she is terminated for "Cause" (as defined below), the right to exercise this option shall terminate immediately upon such cessation of employment. "Cause" is conduct, as determined by the Board of Directors, involving one or more of the following: (i) gross misconduct by the Optionee which is materially injurious to the Company; or (ii) the commission of an act of embezzlement, fraud or deliberate disregard of the rules or policies of the Company which results in material economic loss, damage or injury to the Company; or (iii) the unauthorized disclosure of any trade secret or confidential information of the Company or any third party who has a business relationship with the Company or the violation of any noncompetition covenant or assignment of inventions obligation with the Company; or (iv) the commission of any act which induces any customer or prospective customer of the Company to break a contract with the Company or to decline to do business with the Company; or (v) the conviction of the Optionee of a felony involving any financial impropriety or which would materially interfere with the Optionee's ability to perform his or her services for the Company or otherwise be injurious to the Company; or (vi) the failure of the optionee to perform in a material respect his or her employment obligations without proper cause. In making such determination, the Board of Directors shall act fairly and in utmost good faith. For the purposes of this subsection (f), termination of employment shall be deemed to occur when the optionee receives notice that his or her employment is terminated.

(g) Buy Back Rights. If the Optionee, prior to the Expiration Date, ceases his or her employment or engagement with the Company because he or she is terminated for Cause, pursuant to paragraph (f) of this Section 3, prior to the Company's first underwritten offering to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, then the Company shall have the right and option to purchase, for a period of 180 days from the date of the Optionee's termination of engagement or employment, and if the Company exercises such right, the Optionee shall be required to sell to the Company, any or all of the shares of Common Stock of the Company which may have been granted hereunder as a result of a previous exercise, at a price per share equal to the fair market value (determined by mutual agreement between the Company and the Optionee or, in the absence of such agreement, by an independent third party appraiser as of the date the Company exercises such right). If at any time the Company elects to purchase shares pursuant to this Section 3(g), the closing of such purchase shall take place at the offices of the Company within 30 days after delivery of notice to the Optionee of the Company's election to purchase such shares. The purchase price for such shares shall be paid by delivery of a bank cashier's check or certified check. This provision 3(g) shall survive the exercise or partial exercise of this Option.

4. Payment of Purchase Price

(a) Method of Payment. Payment of the purchase price for shares purchased upon exercise of this option shall be made (i) by delivery to the Company of cash or a certified or bank check to the order of the Company in an amount equal to the purchase price of such shares, (ii) subject to the consent of the Company, by delivery to the Company of shares of Common Stock of the Company then owned by the Optionee having a fair market value equal in amount to the purchase price of such shares, (iii) subject to the consent of the Company, by the delivery of an assignment to the Company of a sufficient amount of the proceeds from the sale of the Common Stock acquired upon exercise of this option and an authorization to the broker or selling agent to pay that amount to the Company, which sale shall be at the Optionee's direction at the time of exercise, (iv) by any other means (including, without limitation, by delivery of a promissory note of the Optionee payable on such terms as are specified by the Board of Directors) which the Board of Directors determines are consistent with the purpose of the Plan and with applicable laws and regulations (including, without limitation, the provisions of Rule 16b-3 under the Securities Exchange Act of 1934 and Regulation T promulgated by the Federal Reserve Board), (v) by the procedure set forth in Section 4(d) below, or (vi) by any combination of such methods of payment.

(b) Valuation of Shares or Other Non-Cash Consideration Tendered in Payment of Purchase Price. For the purposes hereof, unless a recognized market value is available, the fair market value of any share of the Company's Common Stock or other non-cash consideration which may be delivered to the Company in exercise of this option shall be determined in good faith by the Board of Directors of the Company.

(c) Delivery of Shares Tendered in Payment of Purchase Price. If the Optionee exercises this option by delivery of shares of Common Stock of the Company, the certificate or certificates representing the shares of Common Stock of the Company to be delivered shall be duly executed in blank by the Optionee or shall be accompanied by a stock power duly executed in blank suitable for purposes of transferring such shares to the Company.

Fractional shares of Common Stock of the Company will not be accepted in payment of the purchase price of shares acquired upon exercise of this option.

(d) Net Issue Exercise. Prior to the closing of the Company's first underwritten offering to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, in lieu of the payment provisions set forth in Section 4(a), the Optionee may elect to exercise of this option by using the following formula:

$$X = \frac{Y (A - B)}{A}$$

Where: X = The number of shares of Common Stock to be issued to the Optionee.

Y = The number of shares of Common Stock receivable upon exercise of this option (at the date of such calculation).

A = The fair market value of one share of Common Stock (at the date of such calculation).

B = The per share purchase price payable for one share of Common Stock upon exercise of this option.

5. Delivery of Shares; Compliance With Securities Laws, Etc.

(a) General. The Company shall, upon payment of the option price for the number of shares purchased and paid for, make prompt delivery of such shares to the Optionee; provided that if any law or regulation requires the Company to take any action with respect to such shares before the issuance thereof, then the date of delivery of such shares shall be extended for the period necessary to complete such action.

(b) Listing, Qualification, Etc. This option shall be subject to the requirement that if, at any time, counsel to the Company shall determine that the listing, registration or qualification of the shares subject hereto upon any securities exchange or under any state or federal law, or the consent or approval of any governmental or regulatory body, or that the disclosure of non-public information or the satisfaction of any other condition is necessary as a condition of, or in connection with, the issuance or purchase of shares hereunder, this option may not be exercised, in whole or in part, unless such listing, registration, qualification, consent or approval, disclosure or satisfaction of such other condition shall have been effected or obtained on terms acceptable to the Board of Directors. Nothing herein shall be deemed to require the Company to apply for, effect or obtain such listing, registration, qualification, or disclosure, or to satisfy such other condition.

6. Nontransferability of Option. This option is personal and no rights granted hereunder may be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) nor shall any such rights be subject to execution, attachment or similar process except that this option may be transferred as provided in paragraph (e) of Section 3 above. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this option or of such rights contrary to the provisions hereof, or upon the levy of any attachment or

similar process upon this option or such rights, this option and such rights shall, at the election of the Company, become null and void.

7. No Special Employment Rights. Nothing contained in the Plan or this option shall be construed or deemed by any person under any circumstances to bind the Company to continue the employment of the Optionee for the period within which this option may be exercised, or for any other period.

8. Shareholder Rights

(a) No Rights as a Shareholder until Exercise. The Optionee shall have no rights as a shareholder with respect to any shares which may be purchased by exercise of this option (including, without limitation, any rights to receive dividends or non-cash distributions with respect to such shares) unless and until a certificate representing such shares is duly issued and delivered to the Optionee. No adjustment shall be made for dividends or other rights for which the record date is prior to the date such stock certificate is issued.

(b) Transfer Restrictions on Underlying Stock. This Option is subject to the requirement that upon exercise, the underlying security exchanged for the Option, shall be subject to all of the transfer restrictions set forth in the Plan including but not limited those requirements set forth in Paragraph 13 of the Plan entitled "Stock Transfer Restrictions on Underlying Stock," "Right of First Refusal" and "Drag Along Rights," and in Paragraph 21 of the Plan entitled "Lock-Up," and as may be set forth in the by-laws of the Company. The Optionee agrees to be bound by these restrictions and further agrees, upon the request of the Company to execute any further documentation necessary to evidence said agreement. An Optionee's failure to execute same, at the Company's request, shall cause the Option, and/or the underlying security to be immediately null and void. The Company shall be free to place a legend on the back of the underlying security specifying the foregoing restrictions.

9. Adjustment Provisions

(a) General. If, through, or as a result of, any merger, consolidation, sale of all or substantially all of the assets of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar transaction, (i) the outstanding shares of Common Stock are increased, decreased or exchanged for a different number or kind of shares or other securities of the Company, or (ii) additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock or other securities, the Optionee shall, with respect to this option or any unexercised portion hereof, be entitled to the rights and benefits, and be subject to the limitations, set forth in Section 15(a) of the Plan.

(b) Board Authority to Make Adjustments. Any adjustments under this Section 9 will be made by the Board of Directors, whose determination as to what adjustments, if any, will be made and the extent thereof will be final, binding and conclusive. No fractional shares will be issued pursuant to this option on account of any such adjustments.

(c) Limits on Adjustments. No adjustment shall be made under this Section 9 which would, within the meaning of any applicable provision of the Code, constitute a

modification, extension or renewal of this option or a grant of additional benefits to the Optionee.

10. Withholding Taxes. The Company's obligation to deliver shares of Common Stock upon the exercise of this option shall be subject to the Optionee's satisfaction of all applicable federal, state, local and foreign taxes of any kind required by law to be withheld with respect to any shares issued upon exercise of this option. If the Company, in its discretion, determines that it must or should withhold or pay over tax with respect to the exercise of this option or a Disqualifying Disposition (as defined in Section 11 below) of shares of Common Stock acquired by the Optionee on exercise of this option, the Optionee hereby agrees that, at the option of the Company, Optionee will pay to the Company or the Company may withhold from the Optionee's wages the appropriate amount of federal, state, local and foreign taxes attributable to such Disqualifying Disposition. If any portion of this option is treated as a non-qualified option, the Optionee hereby agrees that, at the option of the Company, Optionee will pay to the Company or the Company may withhold from the Optionee's wages the appropriate amount of federal, state, local and foreign taxes attributable to the Optionee's exercise of such non-qualified option. At the Company's discretion, the amount required to be withheld may be withheld in cash from such wages, or (with respect to compensation income attributable to the exercise of this option) in kind from the Common Stock otherwise deliverable to the Optionee on exercise of this Option. The Optionee further agrees that, if the Company does not withhold an amount from the Optionee's wages sufficient to satisfy the Company's withholding obligation, the Optionee will reimburse the Company on demand, in cash, for the amount under withheld.

11. Disqualifying Disposition. Although the parties intend that this option shall qualify as an Incentive Stock Option, if this option is determined not to be an Incentive Stock Option, the Optionee understands that the Company is not responsible to compensate the Optionee or otherwise make up for the treatment of this option as a non-qualified stock option. The Optionee should consult with the Optionee's own tax advisors regarding the tax effects of this option and the requirements necessary to obtain favorable treatment under the Code, including, but not limited to, holding period requirements. The Optionee agrees to notify the Company in writing immediately after the Optionee makes a Disqualifying Disposition (as such term is defined in the Code) of any shares of Common Stock acquired pursuant to the exercise of this option. The Optionee also agrees to provide the Company with any information which it shall request concerning any such disposition. The Optionee acknowledges that he or she will forfeit the favorable income tax treatment otherwise available with respect to the exercise of this Incentive Stock Option if he or she makes a Disqualifying Disposition of the shares acquired on exercise of this option.

12. Investment Representations; Legends; Limitations on Certain Dispositions

(a) Representations. The Optionee represents, warrants and covenants that:

(i) Any shares purchased upon exercise of this option shall be acquired for the Optionee's account for investment only and not with a view to, or for sale in connection with, any distribution of the shares in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any rule or regulation under the Securities Act.

(ii) The Optionee has had such opportunity as he or she has deemed adequate to obtain from representatives of the Company such information as is necessary to permit the Optionee to evaluate the merits and risks of his or her investment in the Company.

(iii) The Optionee is able to bear the economic risk of holding shares acquired pursuant to the exercise of this option for an indefinite period.

(iv) The Optionee understands that (A) the shares acquired pursuant to the exercise of this option will not be registered under the Securities Act and are "restricted securities" within the meaning of Rule 144 under the Securities Act; (B) such shares cannot be sold, transferred or otherwise disposed of unless they are subsequently registered under the Securities Act or an exemption from registration is then available; (C) in any event, an exemption from registration under Rule 144 or otherwise under the Securities Act may not be available for at least one year and even then will not be available unless a public market then exists for the Common Stock, adequate information concerning the Company is then available to the public and other terms and conditions of Rule 144 are complied with; and (D) there is now no registration statement on file with the Securities and Exchange Commission with respect to any stock of the Company and the Company has no obligation or current intention to register any shares acquired pursuant to the exercise of this option under the Securities Act.

By making payment upon exercise of this option, the Optionee shall be deemed to have reaffirmed, as of the date of such payment, the representations made in this Section 12.

(b) Legends on Stock Certificates. All stock certificates representing shares of Common Stock issued to the Optionee upon exercise of this option shall have affixed thereto legends substantially in the following forms, in addition to any other legends required by applicable law:

"The securities represented by this certificate have not been registered under the Securities Act of 1933 and may not be transferred, sold or otherwise disposed of in the absence of an effective registration statement with respect thereto under the Securities Act of 1933, or an opinion of counsel satisfactory to the Company to the effect that registration under such Act is not required."

"The securities represented by this certificate are subject to certain rights of repurchase and restrictions on transfer set forth in the Supernus' 2005 Stock Plan as of December 22, 2005 and in the Incentive Stock Option Agreement between the Company and the holder hereof pursuant to which such securities were issued. A copy of such Agreement will be provided free of charge to the holder of this certificate upon written request therefor addressed to the Company."

(c) Limitations on Certain Dispositions. The Optionee agrees, by accepting this option, that if the Company offers any of its Common Stock for sale pursuant to a registration statement under the Securities Act, the Optionee will not, directly or indirectly, without the prior written consent of the Company, sell, offer or agree to sell, grant any option to purchase or otherwise transfer or dispose of any shares of Common Stock purchased upon

exercise of this option for a period of 180 days after the effective date of such registration statement.

13. Interpretation of this Agreement. All decisions and interpretations made by the Committee, as defined in Section 2 of the Plan, with regard to any question arising under the Plan or this Agreement shall be binding and conclusive on the Company and the Optionee and any other person entitled to exercise this option as provided herein. In the event there is any inconsistency between the provisions of this Agreement and of the Plan, the provisions of the Plan shall govern, subject to the provisions of section 2 above.

14. Miscellaneous

(a) Except as provided herein, this option may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Optionee.

(b) All notices under this option shall be mailed or delivered by hand to the parties at their respective addresses set forth beneath their names below or at such other address as may be designated in writing by either of the parties to one another.

(c) This option shall be governed by and construed in accordance with the laws of the State of Delaware.

Date of Grant: (date of Board approval)

[Name of Company]

By: _____

Name: _____

Title: _____

OPTIONEE'S ACCEPTANCE

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions thereof. The undersigned hereby acknowledges receipt of a copy of the Company's 2005 Stock Plan as of , 2005.

OPTIONEE:

name
address

Exhibit A

Vesting Schedule

Unless otherwise determined by the Board of Directors, vesting shall occur over a period of four years, subject to the Shareholder's continued employment with the Company, in accordance with the following schedules.

(1) 0 Shares on Date of Grant, and

(2) Thereafter, Shares on the First Anniversary of Date of Grant; Shares on the Second Anniversary of Date of Grant; Shares on the Third Anniversary of Date of Grant and Shares on the Fourth Anniversary of Date of Grant.

SUPERNUS PHARMACEUTICALS, INC.

NON-QUALIFIED STOCK OPTION AGREEMENT

1. Grant of Option. , a Delaware corporation (the "Company") hereby grants to , individual whose address is set forth below the optionee signature line (the "Optionee"), an option, pursuant to the Company's 2005 Stock Plan as of December 22, 2005 (the "Plan"), to purchase an aggregate of shares of common stock of the Company ("Common Stock") at a price of $ per share, purchasable as set forth in and subject to the terms and conditions of this option and the Plan. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in Sections 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the "Code").

2. Non-Qualified Stock Option. This option is not intended to qualify as an incentive stock option ("Incentive Stock Option") within the meaning of Section 422 of the Code.

3. Exercise of Option and Provisions for Termination.

(a) Vesting Schedule. Except as otherwise provided in this Agreement, this option may be exercised as to the number of shares indicated opposite the respective dates on Exhibit A hereto ("Vested Shares"). This option may not be exercised with respect to any shares after the tenth anniversary of the date of grant (hereinafter the "Expiration Date").

(b) Exercise Procedure. Subject to the conditions set forth in this Agreement, this option shall be exercised by the Optionee's delivery of written notice of exercise to the Company, specifying the number of shares to be purchased and the purchase price to be paid therefor and accompanied by payment in full in accordance with Section 4. Such exercise shall be effective upon receipt by the Company of such written notice together with the required payment. The Optionee may purchase less than the number of shares covered hereby, provided that no partial exercise of this option may be for any fractional share or for less than one whole share.

(c) Fulfillment of All Contractual Obligations or Other Duties Required. Except as otherwise provided in this Section 3, this option may not be exercised unless the Optionee, at the time he or she exercises this option, has either, (i) fully performed and satisfied the terms and conditions of the agreement pursuant to which this option was granted and/or (ii) if the Optionee is an officer or director of the Company, to date, has fulfilled and discharged the duties and obligations owed as said officer or director, to the satisfaction of the Company.

(d) Exercise Period Upon Termination of Engagement. If the Optionee's engagement is terminated by the Company for any reason other than for "Cause" (as defined

below), then, except as provided in paragraphs (c) above and (e) and (f) below, the right to exercise this option shall terminate the earlier of (i) the fifth anniversary of the date of termination ("Post-Termination Exercise Period") or (ii) the Expiration Date. Provided that this option shall be exercisable only to the extent that the Optionee was entitled to exercise this option on the date of termination. Notwithstanding the foregoing, if the Optionee, prior to the Expiration Date, materially violates any non-competition or confidentiality provisions of any agreement between the Optionee and the Company, the right to exercise this option shall terminate immediately upon such violation. An Optionee's engagement shall not be deemed terminated by the Company if the engagement expires in the ordinary course of the engagement.

(e) Exercise Period Upon Death or Disability. If the Optionee dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Expiration Date while he or she is engaged by the Company or during the Post-Termination Exercise Period, (other than as the result of a discharge for "cause" as specified in paragraph (f) below), this option shall be exercisable, within the period of one year following the date of death or disability of the Optionee (but in no event after the Expiration Date), by the Optionee or by the person to whom this option is transferred by will or the laws of descent and distribution; provided that this option shall be exercisable only to the extent that this option was exercisable by the Optionee on the date of his or her death or disability. Except as otherwise indicated by the context, the term "Optionee", as used in this option, shall be deemed to include the estate of the Optionee or any person who acquires the right to exercise this option by bequest or inheritance or otherwise by reason of the death of the Optionee.

(f) Termination for Cause. If the Optionee, prior to the Expiration Date, ceases his or her engagement with the Company because he or she is terminated for "Cause" (as defined below), the right to exercise this option shall terminate immediately upon such cessation of engagement. "Cause" is conduct, as determined by the Board of Directors, involving one or more of the following: (i) gross misconduct by the Optionee which is materially injurious to the Company; or (ii) the commission of an act of embezzlement, fraud or deliberate disregard of the rules or policies of the Company which results in material economic loss, damage or injury to the Company; or (iii) the unauthorized disclosure of any trade secret or confidential information of the Company or any third party who has a business relationship with the Company or the violation of any noncompetition covenant or assignment of inventions obligation with the Company; or (iv) the commission of any act which induces any customer or prospective customer of the Company to break a contract with the Company or to decline to do business with the Company; or (v) the conviction of the Optionee of a felony involving any financial impropriety or which would materially interfere with the Optionee's ability to perform his or her services for the Company or otherwise be injurious to the Company; or (vi) the failure of the optionee to perform in a material respect his or her engagement obligations without proper cause. In making such determination, the Board of Directors shall act fairly and in utmost good faith. For the purposes of this subsection (f), termination of engagement shall be deemed to occur when the optionee receives notice that his or her engagement is terminated.

(g) Buy Back Rights. If the Optionee, prior to the Expiration Date, ceases his or her engagement with the Company because he or she is terminated for Cause pursuant to paragraph (f) of this Section 3 prior to the Company's first underwritten offering to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, then

the Company shall have the right and option to purchase, for a period of 180 days from the date of the Optionee's termination of engagement, and if the Company exercises such right, the Optionee shall be required to sell to the Company, any or all of the shares of Common Stock of the Company which may have been granted hereunder as a result of a previous exercise, or as a result of a previous exercise under an Option Agreement granted in connection with a previous period of engagement with the Company, at a price per share equal to the fair market value (determined by an independent third party appraiser as of the date the Company exercises such right). If at any time the Company elects to purchase shares pursuant to this Section 3(g), the closing of such purchase shall take place at the offices of the Company within 30 days after delivery of notice to the Optionee of the Company's election to purchase such shares. The purchase price for such shares shall be paid by delivery of a bank cashier's check or certified check. This provision 3(g) shall survive the exercise or partial exercise of this Option.

4. Payment of Purchase Price

(a) Method of Payment. Payment of the purchase price for shares purchased upon exercise of this option shall be made (i) by delivery to the Company of cash or a certified or bank check to the order of the Company in an amount equal to the purchase price of such shares, (ii) subject to the consent of the Company, by delivery to the Company of shares of Common Stock of the Company then owned by the Optionee having a fair market value equal in amount to the purchase price of such shares, (iii) subject to the consent of the Company, by the delivery of an assignment to the Company of a sufficient amount of the proceeds from the sale of the Common Stock acquired upon exercise of this option and an authorization to the broker or selling agent to pay that amount to the Company, which sale shall be at the Optionee's direction at the time of exercise, (iv) by any other means (including, without limitation, by delivery of a promissory note of the Optionee payable on such terms as are specified by the Board of Directors) which the Board of Directors determines are consistent with the purpose of the Plan and with applicable laws and regulations (including, without limitation, the provisions of Rule 16b-3 under the Securities Exchange Act of 1934 and Regulation T promulgated by the Federal Reserve Board), or (v) by any combination of such methods of payment.

(b) Valuation of Shares or Other Non-Cash Consideration Tendered in Payment of Purchase Price. For the purposes hereof, unless a recognized market value is available, the fair market value of any share of the Company's Common Stock or other non-cash consideration which may be delivered to the Company in exercise of this option shall be determined in good faith by the Board of Directors of the Company.

(c) Delivery of Shares Tendered in Payment of Purchase Price. If the Optionee exercises this option by delivery of shares of Common Stock of the Company, the certificate or certificates representing the shares of Common Stock of the Company to be delivered shall be duly executed in blank by the Optionee or shall be accompanied by a stock power duly executed in blank suitable for purposes of transferring such shares to the Company. Fractional shares of Common Stock of the Company will not be accepted in payment of the purchase price of shares acquired upon exercise of this option.

(d) Net Issue Exercise. Prior to the closing of the Company's first underwritten offering to the public pursuant to an effective registration statement under the

Securities Act of 1933, as amended, in lieu of the payment provisions set forth in Section 4(a), the Optionee may elect to exercise this option by using the following formula:

$$X = \frac{Y\ (A - B)}{A}$$

Where: X = The number of shares of Common Stock to be issued to the Optionee.

Y = The number of shares of Common Stock receivable upon exercise of this option (at the date of such calculation).

A = The fair market value of one share of Common Stock (at the date of such calculation).

B = The per share purchase price payable for one share of Common Stock upon exercise of this option.

5. Delivery of Shares; Compliance With Securities Laws, Etc.

(a) General. The Company shall, upon payment of the option price for the number of shares purchased and paid for, make prompt delivery of such shares to the Optionee; provided that if any law or regulation requires the Company to take any action with respect to such shares before the issuance thereof, then the date of delivery of such shares shall be extended for the period necessary to complete such action.

(b) Listing, Qualification, Etc. This option shall be subject to the requirement that if, at any time, counsel to the Company shall determine that the listing, registration or qualification of the shares subject hereto upon any securities exchange or under any state or federal law, or the consent or approval of any governmental or regulatory body, or that the disclosure of non-public information or the satisfaction of any other condition is necessary as a condition of, or in connection with, the issuance or purchase of shares hereunder, this option may not be exercised, in whole or in part, unless such listing, registration, qualification, consent or approval, disclosure or satisfaction of such other condition shall have been effected or obtained on terms acceptable to the Board of Directors. Nothing herein shall be deemed to require the Company to apply for, effect or obtain such listing, registration, qualification, or disclosure, or to satisfy such other condition.

6. Nontransferability of Option. This option is personal and no rights granted hereunder may be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) nor shall any such rights be subject to execution, attachment or similar process except that this option may be transferred as provided in paragraph (e) of Section 3 above. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this option or of such rights contrary to the provisions hereof, or upon the levy of any attachment or similar process upon this option or such rights, this option and such rights shall, at the election of the Company, become null and void.

7. No Special Employment Rights. Nothing contained in the Plan or this option shall be construed or deemed by any person under any circumstances to bind the Company to

continue the engagement of the Optionee for the period within which this option may be exercised, or for any other period.

8. Shareholder Rights

(a) No Rights as a Shareholder until Exercise. The Optionee shall have no rights as a shareholder with respect to any shares which may be purchased by exercise of this option (including, without limitation, any rights to receive dividends or non-cash distributions with respect to such shares) unless and until a certificate representing such shares is duly issued and delivered to the Optionee. No adjustment shall be made for dividends or other rights for which the record date is prior to the date such stock certificate is issued.

(b) Transfer Restrictions on Underlying Stock. This Option is subject to the requirement that upon exercise, the underlying security exchanged for the Option, shall be subject to all of the transfer restrictions set forth in the Plan including but not limited those requirements set forth in Paragraph 13 of the Plan entitled "Stock Transfer Restrictions on Underlying Stock," "Right of First Refusal" and "Drag Along Rights," and in Paragraph 21 of the Plan entitled "Lock-Up," and as may be set forth in the by-laws of the Company. The Optionee agrees to be bound by these restrictions and further agrees, upon the request of the Company to execute any further documentation necessary to evidence said agreement. An Optionee's failure to execute same, at the Company's request, shall cause the Option, and/or the underlying security to be immediately null and void. The Company shall be free to place a legend on the back of the underlying security specifying the foregoing restrictions.

9. Adjustment Provisions

(a) General. If, through, or as a result of, any merger, consolidation, sale of all or substantially all of the assets of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar transaction, (i) the outstanding shares of Common Stock are increased, decreased or exchanged for a different number or kind of shares or other securities of the Company, or (ii) additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock or other securities, the Optionee shall, with respect to this option or any unexercised portion hereof, be entitled to the rights and benefits, and be subject to the limitations, set forth in Section 15(a) of the Plan.

(b) Board Authority to Make Adjustments. Any adjustments under this Section 9 will be made by the Board of Directors, whose determination as to what adjustments, if any, will be made and the extent thereof will be final, binding and conclusive. No fractional shares will be issued pursuant to this option on account of any such adjustments.

(c) Limits on Adjustments. No adjustment shall be made under this Section 9 which would, within the meaning of any applicable provision of the Code, constitute a modification, extension or renewal of this option or a grant of additional benefits to the Optionee.

10. Withholding Taxes. The Company's obligation to deliver shares of Common Stock upon the exercise of this option shall be subject to the Optionee's satisfaction of all

applicable federal, state, local and foreign taxes of any kind required by law to be withheld with respect to any shares issued upon exercise of this option. If the Company, in its discretion, determines that it must or should withhold or pay over tax with respect to the exercise of this option, the Optionee hereby agrees that, at the option of the Company, Optionee will pay to the Company or the Company may withhold from the Optionee's wages the appropriate amount of federal, state, local and foreign taxes attributable thereto. At the Company's discretion, the amount required to be withheld may be withheld in cash from such wages, or (with respect to compensation income attributable to the exercise of this option) in kind from the Common Stock otherwise deliverable to the Optionee on exercise of this Option. The Optionee further agrees that, if the Company does not withhold an amount from the Optionee's wages sufficient to satisfy the Company's withholding obligation, the Optionee will reimburse the Company on demand, in cash, for the amount under withheld.

11. Investment Representations; Legends; Limitations on Certain Dispositions

(a) Representations. The Optionee represents, warrants and covenants that:

(i) Any shares purchased upon exercise of this option shall be acquired for the Optionee's account for investment only and not with a view to, or for sale in connection with, any distribution of the shares in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any rule or regulation under the Securities Act.

(ii) The Optionee has had such opportunity as he or she has deemed adequate to obtain from representatives of the Company such information as is necessary to permit the Optionee to evaluate the merits and risks of his or her investment in the Company.

(iii) The Optionee is able to bear the economic risk of holding shares acquired pursuant to the exercise of this option for an indefinite period.

(iv) The Optionee understands that (A) the shares acquired pursuant to the exercise of this option will not be registered under the Securities Act and are "restricted securities" within the meaning of Rule 144 under the Securities Act; (B) such shares cannot be sold, transferred or otherwise disposed of unless they are subsequently registered under the Securities Act or an exemption from registration is then available; (C) in any event, an exemption from registration under Rule 144 or otherwise under the Securities Act may not be available for at least one year and even then will not be available unless a public market then exists for the Common Stock, adequate information concerning the Company is then available to the public and other terms and conditions of Rule 144 are complied with; and (D) there is now no registration statement on file with the Securities and Exchange Commission with respect to any stock of the Company and the Company has no obligation or current intention to register any shares acquired pursuant to the exercise of this option under the Securities Act.

By making payment upon exercise of this option, the Optionee shall be deemed to have reaffirmed, as of the date of such payment, the representations made in this Section 11.

(b) Legends on Stock Certificates. All stock certificates representing shares of Common Stock issued to the Optionee upon exercise of this option shall have affixed thereto legends substantially in the following forms, in addition to any other legends required by applicable law:

"The securities represented by this certificate have not been registered under the Securities Act of 1933 and may not be transferred, sold or otherwise disposed of in the absence of an effective registration statement with respect thereto under the Securities Act of 1933, or an opinion of counsel satisfactory to the Company to the effect that registration under such Act is not required."

"The securities represented by this certificate are subject to certain rights of repurchase and restrictions on transfer set forth in the 2005 Stock Plan and in the Non-Qualified Stock Option Agreement between the Company and the holder hereof pursuant to which such securities were issued. A copy of such Agreement will be provided free of charge to the holder of this certificate upon written request therefor addressed to the Company."

(c) Limitations on Certain Dispositions. The Optionee agrees, by accepting this option, that if the Company offers any of its Common Stock for sale pursuant to a registration statement under the Securities Act, the Optionee will not, directly or indirectly, without the prior written consent of the Company, sell, offer or agree to sell, grant any option to purchase or otherwise transfer or dispose of any shares of Common Stock purchased upon exercise of this option for a period of 180 days after the effective date of such registration statement.

12. Interpretation of this Agreement. All decisions and interpretations made by the Committee, as defined in Section 2 of the Plan, with regard to any question arising under the Plan or this Agreement shall be binding and conclusive on the Company and the Optionee and any other person entitled to exercise this option as provided herein. In the event there is any inconsistency between the provisions of this Agreement and of the Plan, the provisions of the Plan shall govern, subject to the provisions of section 2 above.

13. Miscellaneous

(a) Except as provided herein, this option may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Optionee.

(b) All notices under this option shall be mailed or delivered by hand to the parties at their respective addresses set forth beneath their names below or at such other address as may be designated in writing by either of the parties to one another.

(c) This option shall be governed by and construed in accordance with the laws of the State of Delaware.

Date of Grant: _____

_____
[Name of Company]

By: _____

OPTIONEE'S ACCEPTANCE

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions thereof. The undersigned hereby acknowledges receipt of a copy of the Company's 2005 Stock Plan as of , 2005.

OPTIONEE:

_____

[Optionee's name and address]

Exhibit A

Vesting Schedule

Vesting Schedule

Unless otherwise determined by the Board of Directors, vesting shall occur over a period of four years, subject to the Shareholder's continued employment with the Company, in accordance with the following schedules.

(1) 0 Shares on Date of Grant , and

(2) Thereafter, Shares on the First Anniversary of Date of Grant; Shares on the Second Anniversary of Date of Grant; Shares on the Third Anniversary of Date of Grant and Shares on the Fourth Anniversary of Date of Grant..

Exhibit 10.2

Confidential

SUPERNUS PHARMACEUTICALS, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN

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SUPERNUS PHARMACEUTICALS, INC.
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN

THIS SUPERNUS PHARMACEUTICALS, INC. SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN (the "Plan"), dated as of this 21th day of December, 2005, is established and maintained by Supernus Pharmaceuticals, Inc. (the "Company") and the Company's subsidiaries and affiliates in the United States of America that, with the consent of the Board of Directors of the Company, elect to participate in the Plan (the "Employer") for the benefit of their eligible employees, as described below.

WITNESSETH THAT:

WHEREAS, the Employer recognizes valuable services performed by its employees, which have contributed to the success of the Employer, and the Company benefits from the success of the Employer;

WHEREAS, the Company and Employer desire to establish a plan to allow a select group of management or highly compensated employees of the Employer to defer a portion of their compensation, and to provide retirement, death and other benefits as provided herein;

and

WHEREAS, the Company and Employer desire to set forth the terms and conditions upon which each of the Employers shall pay such benefits to their respective Participants;

NOW, THEREFORE, in consideration of these premises, the Company and Employer hereby establish the following supplemental executive retirement and nonqualified deferred compensation plan.

ARTICLE I
INTRODUCTION

1.1 Name and Purpose. The Company and Employer hereby establish the Supernus Pharmaceuticals, Inc. Supplemental Executive Retirement Plan, as set forth herein (the "Plan"), for the benefit of a select group of management or highly compensated employees of the Employer. The Plan is not intended to be "qualified" under section 401(a) of the Code; rather, the Plan is intended to be a retirement and deferred compensation plan for a select group of management or highly compensated employees, as described in sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. The Employer intends that the Plan shall be treated as unfunded for tax purposes and for purposes of Title I of ERISA. The Employer's obligations hereunder, if any, to a Participant or Beneficiary shall be unsecured and shall be a mere promise by each Employer to make payments hereunder in the future to those Participants who have performed services for it or their Beneficiaries. A Participant or Beneficiary shall be treated as a general, unsecured creditor of each Employer for whom the Participant has performed services, to the extent provided in Section 5.3.

1.2 Effective Date and Plan Year. The Plan shall be effective as of the Effective Date and will be administered on the basis of the Plan Year. The first Plan Year shall begin on December 21, 2005 and end on December 31, 2005. All subsequent Plan Years shall be the twelve (12) month period beginning on each January 1 and ending on each December 31.

1.3 Plan Appendices. The provisions of the Plan may be modified by Appendices to the Plan. The terms and provisions of each Appendix are a part of the Plan and supersede the provisions of the Plan to the extent necessary to eliminate inconsistencies between the Plan and such Appendix.

ARTICLE II
ELIGIBILITY AND PARTICIPATION

2.1 Eligibility. An Employee is eligible to participate in the Plan during any Plan Year in which he or she is both: (a) actively employed by the Employer as a member of a select group of management or highly compensated employees; and (b) identified as eligible to participate in the Plan for that Plan Year by the Plan Administrator, in its sole and absolute discretion. The Employee's participation in the Plan shall be effective as of the Entry Date specified by the Plan Administrator. An Employee's eligibility to participate in the Plan in any given Plan Year does not guarantee the Employee the right to participate in any subsequent Plan Year.

2.2 Cessation of Participation. If a Participant ceases to satisfy any of the conditions set forth in Section 2.1, his or her active participation in the Plan shall terminate immediately (even if the Plan Year has not ended) and he or she shall become an inactive Participant. An inactive Participant shall not be entitled to make or receive contributions under the Plan, but his or her Account shall continue to be held for his or her benefit, with respect to which the inactive Participant may continue to direct the deemed investment thereof (subject to the Plan Administrator's sole and absolute discretion), and the Participant's Account shall be distributed in accordance with the provisions of Article VI.

ARTICLE III
EMPLOYER CONTRIBUTIONS

3.1 Discretionary Contributions. Employer Contributions are discretionary (except as indicated in Article VIII) and shall be credited to a Participant's Employer Contributions Account in such amount as is determined by the Plan Administrator.

3.2 Credit. Employer Contributions shall be credited to a Participant's Employer Contributions Account on each Accrual Date of the Plan Year. A Participant whose Termination or other cessation of active participation occurs before such an Accrual Date is not entitled to the Employer Contribution for such period (unless he or she again becomes eligible to actively participate in the Plan during such period), or for allocations in subsequent accrual periods of such Plan Year, unless he or she again becomes eligible to actively participate in the Plan with respect to one or more of these accrual periods.

3.3 Nonforfeitable. The Participant's Employer Contributions Account shall be nonforfeitable at all times.

ARTICLE IV
ELECTIVE CONTRIBUTIONS

4.1 Participant Elections and Period of Deferral. Each Participant who is eligible to make an Elective Contribution and wants to make an Elective Contribution from his or her Compensation shall make his or her deferral election on a Participation Agreement. This election shall be made during the thirty (30) day period preceding the first day of the Plan Year. If an individual becomes a Participant after the first day of the Plan Year, he or she may make a deferral election with thirty (30) days of becoming a

Participant, but only with respect to Compensation for services to be performed after he or she makes the election. A Participant may not elect to increase, decrease or cease his or her Compensation deferral at any time during the Plan Year, except as permitted under Section 4.4. However, a Participant may make a new election (or revoke his or her election) for the following Plan Year during the election period for that Plan Year. If a Participant does not change his or her current Plan Year's election within the election period for the following Plan Year, his or her current Plan Year's election will continue in effect for the following Plan Year. A Participant may elect to defer a maximum of seventy (70) percent of his or her Compensation in whole percentages for the Plan Year or portion of the Plan Year he or she participates in the Plan. Notwithstanding the foregoing, the Plan Administrator may specify that a Participant's deferral election not be less than five (5) percent of such Participant's Compensation, or any such other amount as determined by the Plan Administrator, in its sole and absolute discretion.

4.2 Elective Contributions Account. Elective Contributions shall be credited to a Participant's Elective Contributions Account as soon as practicable following each payroll period.

4.3 Nonforfeitable. The Participant's Elective Contributions Account shall be nonforfeitable at all times.

4.4 Suspension of Deferral. Subject to such rules as the Plan Administrator may prescribe, a Participant may elect to suspend his or her Elective Contributions to the Plan at any time. However, if the Participant makes such a suspension election, he or she shall not be permitted to make Elective Contributions for the remainder of the Plan Year. The Participant shall be permitted to make an Elective Contribution election effective for the first Entry Date of the Plan Year next following the Plan Year in which such suspension of Elective Contributions was effective.

4.5 Participation in Elective Contributions Feature. In order to be eligible to make a deferral election and participate in the Elective Contributions Feature of the Plan, the Plan

Administrator, its sole and absolute discretion, must select and notify Participants of their eligibility to make deferral elections pursuant to this Article IV. Approval by the Plan Administrator for a Participant to participate in the Plan's Employer Contributions feature does not automatically make a Participant eligible to participate in the Elective Contributions feature of the Plan under this Article IV.

ARTICLE V
INVESTMENTS AND FUNDING

5.1 Income (or Loss) on Credits. For purposes of determining income (or loss) on a Participant's Account, the Participant's Account shall be deemed invested in such Measurement Funds as the Participant may designate from time to time under procedures established by the Plan Administrator. The designation of Measurement Funds from time to time shall apply to the Participant's entire Account, until changed. Designation of Measurement Funds shall be in whole percentages of the balance of a Participant's Account, which percentages shall add up to 100 percent. If the Participant does not otherwise designate a Measurement Fund under procedures established by the Plan Administrator, his or her Account shall be deemed invested in the Fidelity Advisor Prime Money Market Fund or an alternative money market fund chosen by the Plan Administrator.

As of any January 1, April 1, July 1 or October 1 or such other dates specified by the Plan Administrator, a Participant may change the designation or allocation of Measurement Funds with respect to his Account pursuant to procedures established by the Plan Administrator to implement such changes.

For purposes of determining income (or loss), a Participant's Employer Contributions and Elective Contributions shall be deemed to have been invested in Measurement Funds as of the date they are credited under the Plan. For purposes of determining income (or loss), a Participant's Account shall be deemed to have been

reinvested in the newly-designated Measurement Funds as soon as reasonably practicable under procedures established by the Plan Administrator to implement such changes. The performance of each Measurement Fund will be determined by the Plan Administrator, in its sole and absolute discretion, based on the performance of the Measurement Funds themselves.

5.2 Adjustment of Account. The Plan Administrator shall create and maintain records to disclose the interest in the Plan of each Participant and Beneficiary. Records shall be in the form of individual bookkeeping accounts. As of each Accounting Date, unless the Plan Administrator determines other adjustment procedures shall apply, the Plan Administrator shall:

(a) First, charge a Participant's Account all payments or distributions made since the last preceding Accounting Date;

(b) Next, adjust the Account for applicable deemed income or loss since the last preceding Accounting Date, based upon the performance of said Participant's selection of Measurement Funds in effect for the period and further that payments and distributions in subparagraph (a) are charged as of the first day of the period; and

(c) Last, credit the Participant's Account with Employer Contributions credited and Elective Contributions made on behalf of the Participant made since the last preceding Accounting Date.

5.3 Funding. Each Employer, in its sole and absolute discretion, may (or may not) acquire any investment product or any other instrument or otherwise invest any amount to provide the funds from which it can satisfy its obligation to make benefit payments under this Plan. Any investment product or other item so acquired for the

convenience of such Employer shall be the sole and exclusive property of such Employer (or a Trust established by the Company or Employer), with the Employer (or the Trust) named as sole owner and sole beneficiary thereof. Each Employer shall be responsible and generally liable for only those Plan liabilities owed to those Participants who have performed services for such Employer. If a Participant performs services for more than one Employer, each such Employer shall be responsible for such pro rata share of such Participant's Plan liabilities as is determined by the Plan Administrator, in its sole and absolute discretion, based on the services performed for each Employer by the Participant, when they were performed and the Compensation of the Participant at such time the services are performed. To the extent that a Participant or his or her Beneficiary acquires a right to receive payments from an Employer under the Plan, such right shall be no greater than the right of any unsecured general creditor of such Employer.

5.4 Change in Control. Notwithstanding Section 5.3 or any other provision of this Plan to the contrary, upon the occurrence of a Change in Control, the Company and Employers will immediately create a Trust (if it has not been previously created) and the Employer will immediately accelerate the funding of the Trust such that Trust assets will be sufficient to pay all Account balances as of the date of the Change in Control and the Employer will continue the funding of the Trust for the two years following the Change in Control, on at least a semiannual basis, such that the Trust assets will be sufficient to pay all Account balances on such dates. The Trust shall substantially conform to the terms of the model trust provided by the Internal Revenue Service as described in Revenue Procedure 92-64, subject to any revisions necessary due to subsequent legislation and regulatory or other guidance.

ARTICLE VI
DISTRIBUTION

6.1 Timing of Distribution. The Participant's Employer Contributions Account and the Participant's Elective Contributions Account shall be distributed as soon as practicable following the earliest of the Participant's Termination, Disability, death, Specified Distribution Date or the date the Plan Administrator terminates the Plan.

If, however, a Participant receives a distribution with respect to his or her Employer Contribution Account pursuant to an election to receive such distribution on a Specified Distribution Date, no Elective Contributions under Article IV will be permitted to be made or credited to his or her Accounts, unless the Plan Administrator determines otherwise.

However, notwithstanding any provision of the Plan to the contrary, if a Participant's compensation is subject to the limitations of Code section 162(m), the Plan Administrator, in its sole and absolute discretion, may limit the amount that a Participant may receive a distribution from the Plan for the Plan Year to avoid nondeductibility under Code section 162(m). Distributions not made in a Plan Year for this reason will be distributed, as permitted under the Plan, in the following Plan Year before any distributions that become payable in that following Plan Year or as soon as practicable thereafter.

6.2 Form of Distribution. Distributions from the Plan shall be made in cash in a single lump sum distribution. Notwithstanding the foregoing, the Plan Administrator may make a distribution (all or in part) in kind rather than in cash if the Plan Administrator determines any assets acquired with respect to the Plan cannot be readily liquidated.

6.3 Beneficiaries. If a Participant dies, his or her Beneficiary as of the date of the Participant's death (or such Beneficiary's estate if he or she dies before payment is made) shall receive the balance of the Participant's Account in the form of a lump sum within ninety (90) days of the Participant's death. Until the distribution date, the Participant's Beneficiary shall be entitled to direct the deemed investment of the Account (as if the Beneficiary was the Participant). A Participant may designate on the Participation Agreement a primary Beneficiary or Beneficiaries to receive the value of the Participant's Accounts after his or her death. A Participant also may designate a contingent Beneficiary or Beneficiaries to receive the value of the Participant's Accounts if all primary Beneficiaries predecease the Participant or have ceased to exist on the date of the Participant's death. A Participant may designate a new Beneficiary at any time pursuant to such procedures and on such forms as the Plan Administrator determines.

6.4 Distribution Election. When an individual first becomes a Participant, he or she may elect a Specified Distribution Date, if he or she desires. If a Participant fails to make such an election, he or she shall be deemed to have not elected a Specified Distribution Date.

6.5 Financial Hardship Withdrawals. Notwithstanding any provision of the Plan to the contrary, any portion of a Participant's Elective Contributions Account not yet distributable under Section 6.1 may be distributed to the Participant in a single lump sum upon his or her request if the Participant has a financial hardship. A financial hardship is an unexpected and significant need for cash (which cannot be met reasonably and contemporaneously from other sources, such as insurance or liquidation of the Participant's assets - including those of a spouse or minor children that are reasonably available to the Participant - to the extent such liquidation would not itself cause financial hardship) arising from an illness or accident of the Participant or his or her spouse or dependent (as defined in Code section 152(a)) or other similar extraordinary and unforeseeable occurrence as a result of events beyond the control of the Participant as determined by the Plan Administrator in its sole and absolute discretion. Cash needs arising from foreseeable events or discretionary expenditures such as the purchase of a

residence or education expenses for dependents shall not, alone, be considered a financial hardship. Such request for distribution and support for such requested amount shall be provided by the Participant to the Plan Administrator in whatever form required by the Plan Administrator, in its sole and absolute discretion. The Plan Administrator shall determine the amount of the permitted withdrawal, which shall not exceed the amount necessary to address the Participant's financial hardship, plus taxes. Withdrawals made pursuant to this section shall be paid as soon as practicable following approval by the Plan Administrator. However, if a withdrawal pursuant to this section is paid to a Participant, such Participant may make no further Elective Contributions under the Plan for twelve (12) months from the date of Payment.

6.6 Non-Scheduled In-Service Distributions. Notwithstanding any provision of the Plan to the contrary, any portion of a Participant's Elective Contributions Account not yet distributable under Section 6.1 may be distributed to the Participant in a single lump sum upon his or her request. In such event, however, ten (10) percent of the amount deducted from the Participant's Elective Contributions Account will be forfeited and not paid to the Participant, and the Participant may make no further Elective Contributions under the Plan for twelve (12) months. The aforementioned requirement that ten (10) percent of the amount deducted from the Participant's Elective Contributions Account be forfeited shall not apply to financial hardship withdrawals made pursuant to Section 6.5. Distributions made pursuant to this section shall be paid as soon as practicable following approval by the Plan Administrator.

6.7 Redeferral Elections. The Plan Administrator, in its sole and absolute discretion, may permit a Participant who has elected a Specified Distribution Date to defer all or some of his or her distributions under the Plan to a later distribution date than what was initially elected, however: (a) such deferral shall only be permitted once during the period of the Participant's participation in the Plan. (b) the Participant must make such an election no later than twelve (12) months prior to the Specified Distribution Date, and (c) a Participant may defer all or any portion of such distribution for an additional period of not less than two (2) years. A redeferral election will not be made available to a

Participant who Terminates, becomes disabled or dies prior to the Specified Distribution Date.

ARTICLE VII
ADMINISTRATION

7.1 Plan Administrator. The Plan shall be administered by the Supplemental Retirement Plan Committee of the Company, which shall consist of one or more persons initially appointed by the Board of Directors of the Company and which shall always have a majority of members who are not Participants in the Plan. The Remuneration Committee of the Company may remove any member of the Supplemental Retirement Plan Committee at any time, with or without cause, and may fill any vacancy. If a vacancy occurs, the remaining member or members of the Supplemental Retirement Plan Committee have full authority to act. Any member of the Supplemental Retirement Plan Committee may resign by delivering his written resignation to the Supplemental Retirement Plan Committee and the Remuneration Committee within thirty (30) days prior to resignation date. The Remuneration Committee at its sole and absolute discretion may waive the thirty (30) day notice requirement. The Supplemental Retirement Plan Committee acts by a majority of its members at the time in office and may take action either by vote at a meeting or by consent in writing without a meeting. The Supplemental Retirement Plan Committee may adopt such rules and appoint such subcommittees as it deems desirable for the conduct of its affairs and administration of the Plan. The Supplemental Retirement Plan Committee may delegate to any person or persons all or some of its rights and duties under the Plan. Any such delegation shall be valid and binding on all persons and the person or persons to whom or which authority is delegated shall have full power to act in all matters so delegated until the authority expires by its terms or is revoked by the Supplemental Retirement Plan Committee, as the case may be.

7.2 Plan Administrator's Rights, Duties and Powers. The Plan Administrator shall have all the powers necessary and appropriate to discharge its duties under the Plan,

which powers shall be exercised in the sole and absolute discretion of the Plan Administrator, including, but not limited to, the following:

(a) To construe and interpret the provisions of the Plan and to make factual determinations thereunder, including the power to determine the rights or eligibility under the Plan and amounts of benefits (if any) under the Plan, and to remedy ambiguities, inconsistencies or omissions, and such determinations by the Plan Administrator shall be binding on all parties;

(b) To adopt such rules of procedure and regulations as in its opinion may be necessary for the proper and efficient administration of the Plan and as are consistent with the Plan and Trust agreement, if any;

(c) To direct the payment of distributions in accordance with the provisions of the Plan;

(d) To employ agents, attorneys, accountants, actuaries, physicians or other persons (who also may be employed by the Company or Employer) and to delegate to them such powers, rights and duties as the Plan Administrator may consider necessary or advisable to carry out administration of the Plan;

(e) To appoint an investment manager to manage (with power to acquire and dispose of) the assets of the Employer that may be used to satisfy benefit obligations under the Plan, and to delegate to any such investment manager all of the powers, authorities and discretions granted to the Plan Administrator hereunder or under a Trust (if any); and

(f) To do all other things the Plan Administrator deems necessary or desirable for the advantageous administration of the Plan and to make the Plan fully effective in accordance with its terms and intent.

7.3 Interested Plan Administrator Member. If a member of the Plan Administrator is also a Participant in the Plan, the Plan Administrator member may not decide or determine any matter or question concerning the amount of Employer Contributions he or she is entitled to under the Plan, his or her eligibility for a financial hardship distribution under the Plan, distributions of any kind to be made specifically to him or her pursuant to the Plan, or resolution of any claim he or she makes with respect to the Plan, unless such decision or determination could be made by the Plan Administrator member under the Plan if the Plan Administrator member were not serving as the Plan Administrator.

7.4 Expenses. All costs, charges and expenses reasonably incurred by the Plan Administrator shall be paid by the Employers in such proportion as the Plan Administrator determines. No compensation shall be paid to a member of the Plan Administrator for services performed as the Plan Administrator.

7.5 Claims. Any claim by a Participant or Beneficiary for a Plan benefit shall be in writing and delivered to the Plan Administrator.

If the Plan Administrator denies the claim in whole or in part, it shall furnish written notice of such decision to the Participant or Beneficiary not later than 90 days from the time the claim is received; provided, however, if special circumstances warrant, the Plan Administrator may extend the time for processing the claim by so notifying the Participant or Beneficiary in writing within said 90 days, specifying the special circumstances requiring the extension of time and the date by which a final decision is expected. In no event may the extension period exceed 90 days from the end of the initial 90-day period.

The written notice of denial of claim shall set forth the specific reason(s) for denial; the pertinent Plan provisions(s) on which the denial is based; a description of any

additional material or information necessary for perfection of the claim and an explanation of why such material of information is necessary; and information for instituting the review procedure.

If no notice of denial is furnished to the Participant or Beneficiary within 90 days from the date the claim is received by the Plan Administrator, as extended as provided above, the claim shall be deemed denied and the Participant or Beneficiary may proceed to the review procedure.

The Participant or Beneficiary shall have 60 days after receipt the notice of denial of the claim to make a written request to the Company's SERP Committee for a review of the claim. In connection with such request, the Participant or Beneficiary shall be entitled to review pertinent documents and submit written issues and comments. If no request for review is made within said 60 days, the determination of the Plan Administrator shall be final and conclusive.

The SERP Committee's written decision on review shall be made and furnished to the Participant or Beneficiary within 60 days after receipt of the request for review unless special circumstances require an extension for processing the claim, in which case the Participant or Beneficiary shall be so notified in writing prior to the commencement of the extension. In no event shall the SERP Committee render its decision later than 120 days after receipt of a request for review.

The written decision on review shall set forth the specific reason(s) for the decision as well as pertinent Plan provision(s) on which the decision is based. If a decision on review is not furnished within the prescribed time period, the claim shall be deemed denied on review.

A Participant or Beneficiary shall not pursue any other legal remedies he may have with respect to the denial of a Plan benefit unless and until the Participant or Beneficiary has exhausted all procedures set for in this section 7.5.

Any controversy, claim or dispute arising out of or relating to the operation, construction, interpretation or enforcement of this Plan, including disputes as to the scope of this clause, shall be resolved through good faith negotiations between the parties. If such efforts provide unsuccessful, all such controversies, claims or disputes shall be submitted to binding arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et

seq. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration award shall be final and binding and it may be confirmed and enforced in any court of competent jurisdiction. The arbitration proceeding shall commence no later than forty five (45) days from the date of the selection of an arbitrator. The arbitrator shall issue the award no later than thirty (30) days from the close of the hearing. Each party shall pay for all attorney fees it incurred in connection with the arbitration. Materials, submissions and documents relating to the arbitration shall be deemed confidential. Neither party shall disclose any information about the evidence produced by the other party in the arbitration proceeding, except in the course of judicial, regulatory, or arbitration proceeding, or as may be demanded by government authority.

7.6 Statements. The Plan Administrator shall give each Participant a statement of the value of his or her Account, and the Measurement Funds then in effect for that Account, as of and as soon as reasonably practicable after each Accounting Date, unless the Plan Administrator determines otherwise. The Plan Administrator may, but shall not be required to, provide similar statements as of any intervening date. The value of a Participant's Account, and the applicable Measurement Funds, as of the applicable date, shown on any such statement shall be conclusive and binding on the Participant absent bad faith or manifest error unless the Participant brings the error to the attention of the Plan Administrator by filing a claim for clarification of his or her future rights to benefits pursuant to Section 7.5 within ninety (90) days after receiving that statement.

7.7 No Liability. No employee, agent, officer, trustee, member, volunteer or director of the Company or Employer shall, in any event, be liable to any person for any action taken or omitted to be taken in connection with the interpretation, construction or administration of this Plan, so long as such action or omission to act be made in good faith. To the extent permitted by applicable law, the Company and Employer shall indemnify and hold harmless the Plan Administrator and each member thereof, and any delegate of the Plan Administrator who is an employee of the Company or Employer against any and all expenses, liabilities, and claims including legal fees to defend against

such liabilities and claims arising out of their discharge in good faith of responsibilities under or incident to the Plan, other than expenses and liabilities arising out of willful misconduct or gross negligence. This indemnity shall not preclude such further indemnities as may be available under insurance purchased by the Company or Employer or provided by the Company or Employer under any by-law, agreement, or otherwise, as such indemnities are permitted under state law.

ARTICLE VIII
AMENDMENT AND TERMINATION

The Company reserves the right, in its sole and absolute discretion, to amend, alter, modify, suspend, revoke, or terminate the Plan by action of the Plan Administrator, without the consent of any Participant or Beneficiary. Any such action shall be made pursuant to a resolution or written instrument executed by the Plan Administrator and shall be effective as of the date of the resolution or written instrument or such later date as specified therein. No such amendment, termination or other action described above shall directly or indirectly deprive any Participant or Beneficiary of all or any portion of his or her Accounts as determined as of the effective date of such action or directly or indirectly reduce the balance of any Account held hereunder as of the effective date of such action, unless in the reasonable judgment of the Plan Administrator such action is required to comply with applicable law or to preserve the tax treatment of benefits under this Plan for the Employer or the Participant or is consented to by the affected Participant. Notwithstanding anything in this Plan to the contrary, upon termination of the Plan, the Plan Administrator may, in its sole and absolute discretion, pay all Account balances to the Participants (or Beneficiaries) entitled thereto in single lump sums.

However, in the event of a Change in Control, and for a period of two (2) years commencing on the Change in Control date and ending on the second anniversary of the Change in Control date, the Plan Administrator may not amend, alter, modify, suspend, revoke, or terminate this Plan or use its discretion as Plan Administrator to exclude those Employees who are Participants in the Plan immediately before the Change in Control

from eligibility or participation in the Plan under Article II of the Plan. Further, for the two (2) year period commencing on the Change in Control date and ending on the second anniversary of the Change in Control date, the Plan Administrator may not use its discretion to reduce or eliminate any deferral opportunity, investment opportunity, benefits or contributions under Articles III and IV. Finally, during the two (2) year period commencing on the Change in Control date and ending on the second anniversary of the Change in Control date the Plan Administrator is required to provide for Employer Contributions to each Participant in an amount equal to the greater of: (a) the percentage credited to such Participant's Employer Contribution Account during the Plan Year immediately preceding the Change in Control, or (b) the dollar amount credited to the Participant's Employer Contribution Account during the Plan Year immediately preceding the Change in Control.

ARTICLE IX
PARTICIPATION BY AFFILIATES AND SUCCESSORS

9.1 Adoption of the Plan. With the consent of the Board of Directors of the Company or its designee, any Affiliate in the United States of America may become a participating Employer under the Plan by (a) taking appropriate action to adopt the Plan; and (b) executing and delivering any documents and taking any other action as may be necessary or desirable to put the Plan into effect with respect to that corporation or entity.

9.2 Withdrawal from Participation. Any Employer may, with the consent of the Board of Directors of the Company or its designee, withdraw from participation in the Plan at any time by filing with the Plan Administrator a duly certified copy of a resolution of its board of directors to that effect and giving notice of its intended withdrawal to the Plan Administrator 30 days prior to the effective date of withdrawal.

9.3 Company as Agent for Employers. Each Affiliate that becomes a participating Employer pursuant to Section 9.1 or Section 9.4 will be deemed to have

appointed the Plan Administrator as its agent to exercise on its behalf all of the powers and authorities conferred upon the Plan Administrator by the terms of the Plan, including, but not limited to, the power to amend, alter, modify, suspend, revoke or terminate the Plan. Each Employer must, from time to time, upon the Plan Administrator's request, furnish to the Plan Administrator any data and information as the Plan Administrator requires in the performance of its duties.

9.4 Continuance By Successor. If the Company or any Employer is reorganized by way of merger, consolidation, transfer of assets, or otherwise, so that a corporation, partnership or person other than an Employer succeeds to all or substantially all of the Employer's business, the successor may be substituted for the Employer under the Plan only if it remains an Affiliate of the Company after the reorganization. The successor may be so substituted by adopting the Plan, subject to the consent of the Board of Directors of the Company. Benefit payments by the Employer will be automatically suspended from the effective date of any reorganization until the date upon which the substitution of the successor for the Employer under the Plan becomes effective. If, within ninety (90) days following the date of any reorganization, the successor has not elected (or is ineligible to so elect) to become a party to the Plan, nor made arrangements acceptable to the Plan Administrator to assume obligations to Employees of the Employer involved in the reorganization or if the Employer adopts a plan of complete liquidation other than in connection with a reorganization, the Plan will be automatically terminated with respect to Employees of the Employer as of the close of business on the 90th day following the effective date of the reorganization or as of the close of business on the date of adoption of the plan of complete liquidation, as the case may be and distribution of the Accounts of these Employees shall commence. If the successor is eligible to make an election to become a party to the Plan and such an election is timely made but later rejected by the Board of Directors of the Company, the Plan will also be automatically terminated with respect to Employees of the Employer as of the close of business on the 30th day following the rejection, and distribution of the Accounts of these Employees shall commence.

ARTICLE X
MISCELLANEOUS

10.1 Non-Assignability of Benefits. Neither any Participant nor any Beneficiary under this Plan shall have any power or right to transfer, assign, anticipate, hypothecate or otherwise encumber any part or all of the amounts payable hereunder. Such amounts shall not be subject to seizure by any creditor of a Participant or any Beneficiary hereunder, by a proceeding at law or in equity, nor transferable by operation of law in the event of the bankruptcy or insolvency of any Participant or any Beneficiary hereunder. Any such attempted assignment or transfer shall be void.

10.2 Impact on Other Benefits. Except as otherwise required by the Code or any other applicable law, this Plan and the benefits provided herein are in addition to all other benefits which may be provided by the Employer or Company to the Participants from time to time, and shall not reduce, replace or otherwise cause any reduction, in any manner, with regard to any of such other benefits.

10.3 Notices. Any notice, consent or demand required or permitted to be given under the provisions of this Plan by the Company, Employer, Plan Administrator, or any Participant or Beneficiary shall be in writing, and shall be signed by the person or entity giving or making the same. If such notice, consent or demand is mailed, it shall be sent by United States certified mail, postage prepaid, and if sent to the Employer or Plan Administrator, it shall be addressed to the Senior VP of Global Human Resources of the Company or any successor thereto or, if sent to a Participant or Beneficiary, it shall be addressed to such individual or entity's last known address as shown on the records of the Employer. If mailed, the date of such mailing shall be deemed the date of notice, consent or demand.

10.4 Facility Of Payment. In the event any distribution is payable under this Plan to a minor or other individual who is legally, physically or mentally incompetent to

receive such payment, the Plan Administrator, in its sole and absolute discretion, shall pay such benefits to one or more of the following persons: (a) directly to such minor or other person; (b) to the legal guardian or conservator of such minor or other person; or (c) to the spouse, parent, brother, sister, child or other relative of such minor or other person for the use of such minor or other person. The Plan Administrator shall not be required to see to the application of any distribution so made to any of such persons, but the receipt therefore shall be a full discharge of the liability of the Plan, the Plan Administrator, the Employer and the trustee to such minor or other person.

10.5 No Employment Rights. Nothing in this Plan shall confer any greater employment rights on a Participant than he or she otherwise may have.

10.6 Successors. All obligations of an Employer under this Plan shall be binding on any successor to the Employer, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Employer.

10.7 Cooperation. Participants and Beneficiaries must furnish the Plan Administrator any documents, evidence or information that the Plan Administrator considers necessary or desirable for the purposes of administering the Plan, or to protect the Plan Administrator, and it will be a condition of the Plan that each person must furnish this information promptly and sign required documents before any benefits become payable under the Plan.

10.8 Tax Withholding. The Employer shall have the right to deduct from all deferrals and payments made under this Plan any federal, state, local or other taxes required by law to be withheld with respect to such deferrals and payments.

10.9 Governing Law. This Plan shall be governed by and construed in accordance with the laws of the State of Kentucky, except to the extent preempted by

ERISA or other federal laws. Notwithstanding the foregoing, no effect shall be given to the conflicts of law rules and procedures under the laws of the State of Kentucky.

10.10 Severability. In the event any provision of the Plan shall be declared illegal or invalid for any reason, the remaining provisions of the Plan shall be fully severable and the Plan shall be construed and enforced as if the illegal or invalid provision had never been a part of the Plan.

10.11 Tax and Legal Treatment Contingency. The Company, Employer and Plan Administrator make no guarantees, representations, or warranties (express or implied) with respect to the tax, legal, or other effect of the Plan. However, to the extent any provision of this Plan would subject a Participant to income taxes on a portion of his or her Account prior to distribution, the Plan Administrator, in its sole and absolute discretion, may determine that such provision shall become immediately void or distribute such portion of the Participant's Account or take other action it deems appropriate.

10.12 Headings. Headings used throughout the Plan are for convenience only and shall not be given legal significance.

10.13 Counterparts. The Plan may be executed in any number of counterparts, each of which shall be deemed an original. All counterparts shall constitute one and the same instrument, which shall be sufficiently evidenced by any one thereof.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed by its duly authorized officer effective as of the Effective Date.

Supernus Pharmaceuticals, Inc.

By: _____

Its: _____

APPENDIX I
DEFINITIONS

Except as otherwise provided herein, the terms provided in this Appendix I shall have the following definitions wherever used in this Plan with initial capital letters.

Account means amounts credited under the Plan and include a Participant's Employer Contributions Account and Elective Contributions Account and such other bookkeeping accounts as the Plan Administrator specifies. All Accounts are maintained on the books of the Employer, and the Employer is under no obligation to segregate any assets to provide for these liabilities, except as provided in Section 5.4.

Accounting Date means such date designated by the Plan Administrator as a valuation date on which income or loss shall be credited or debited.

Accrual Date means March 31, June 30, September 30 and December 31 of the Plan Year, or such other date or dates specified by the Plan Administrator.

Affiliate means any subsidiary or business related to (e.g., limited liability company or partnership) the Company or Employer.

Beneficiary means any person, entity, or any combination thereof at the Participant named in the Participation Agreement, or such other forms as the Plan Administrator determines, as beneficiary to receive benefits under this Plan in the event of the Participant's death or, in the absence of any such designation, the Participant's surviving spouse or, if none, the Participant's estate.

Change in Control means an acquisition whereby any person either alone or together with any person acting in concert with him obtains control as defined in Section 840 of the UK Income and Corporation Tax Act 1988 of the Company.

Code means the Internal Revenue Code of 1986, as amended.

Company means Supernus Pharmaceuticals, Inc., or any successor thereto.

Compensation means the Participant's annual base salary for services rendered to the Employer for the applicable period, including amounts that would be paid to the Participant but for the Participant's election under a cash or deferred arrangement such as described in Section 401(k) of the Code, a cafeteria plan described in Section 125 of the Code or this Plan and amounts characterized by the Employer as short term disability pay. Compensation shall not include severance or salary continuation pay.

Disability means when a Participant satisfies the requirements for benefits under his or her Employer's long term disability plan and is determined to be disabled by a physician approved by the Plan Administrator.

Effective Date means September 30, 2005, although all provisions of the Plan related to the deferral of compensation, including but not limited to Article IV, shall not become effective until such date as the Plan Administrator specifies they shall become effective.

Elective Contributions mean contributions made to the Plan pursuant to Article III.

Employee means an individual whom the Employer treats for the Plan Year as a common law employee for purposes of employment taxes and wage withholding for federal income taxes.

Employer means the Company and any Affiliate in the United States of America that, with the consent of the Board of Directors of the Company, or its designee, elects to participate in the Plan pursuant to and satisfies the requirements of Section 9.1.

Employer Contributions mean contributions made to the Plan pursuant to Article IV.

Entry Date means any January 1, April 1, July 1 or October 1 or any other date or dates specified by the Plan Administrator.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Measurement Funds mean such publicly traded or offered mutual fund or funds or other investment options which a Participant or Beneficiary may select to determine income (or loss) on his or her Account balances, as determined by and in the sole and absolute discretion of the Plan Administrator.

Participant means an Employee who satisfies the conditions of Section 2.1.

Participation Agreement means the agreement executed by the Participant that includes any provisions determined by the Plan Administrator (e.g., the Participant's deemed investment preferences. Beneficiary designation, deferral of Compensation and Specified Distribution Date), or any other documents that the Plan Administrator determines.

Plan means this Supernus Pharmaceuticals, Inc. Supplemental Executive Retirement Plan, including all Appendices to the Plan.

Plan Administrator means the Supplemental Retirement Plan Committee described in Section 7.1.

Plan Year means the twelve (12) month period beginning on each January 1 and ending on each December 31, except the first Plan Year shall begin on July 1, 2003 and end on December 31, 2003.

Retirement Age means the date upon which the Participant attains age 65, regardless of whether the Participant has had a Termination.

Specified Distribution Date means: (a) with respect to a Participant's Elective Contributions Account, a date chosen by the Participant on the Participation Agreement, which can be no earlier than two (2) years from the date the election is made, or (b) with respect to a Participant's Employer Contribution Account, a date chosen by the Participant on the Participation Agreement, which can be no earlier than the Participant's Retirement Age while still employed by the Employer.

Termination means an Employee's separation of service from the Employer, Company and all Affiliates whether based in the United States of America or not.

Trust means any trust, including but not limited to a rabbi or grantor trust, that may be established in connection with the Plan to set-aside assets of the Plan and provide security to Participants and which may contain sub-trusts; provided, however, that unless otherwise agreed to by the Participant and Employer, the assets held in such trust or sub-trust would remain the property of the Employer and subject to creditors of the Employer.

Exhibit 10.3

EMPLOYMENT AGREEMENT

This AGREEMENT (the "Agreement") is made as of December 22, 2005 (the "Effective Date"), by and between Supernus Pharmaceuticals, Inc., a Delaware corporation (the "Employer"), and Jack Khattar (the "Executive"). In consideration of the mutual covenants contained in this Agreement, the Employer and the Executive agree as follows:

WHEREAS, the Executive and the Employer have agreed to execute this Employment Agreement to govern their relationship commencing at the Effective Date.

NOW THEREFORE, in consideration of the foregoing premises and such other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Employment. The Employer agrees to employ the Executive and the Executive agrees to be employed by the Employer on the terms and conditions set forth in this Agreement.

2. Capacity. The Executive shall continue to serve the Employer as President and Chief Executive Officer. The Executive shall also serve the Employer in such other or additional offices as the Executive may be requested to serve by the Board of Directors of the Employer (the "Board of Directors"), provided that (a) such other offices are commensurate with Executive's background and skills, his position as a Member of the Board and (b) Executive reports directly to the Board of Directors in such other offices. In such capacity or capacities, the Executive shall perform such services and duties in connection with the business, affairs and operations of the Employer as may be assigned or delegated to the Executive from time to time by or under the authority of the Board of Directors.

3. At-Will Employment. The Employer and the Executive agree and acknowledge that the Executive's employment is at-will and may be terminated by either party at any time for any or no reason.

4. Compensation and Benefits. The regular compensation and benefits payable to the Executive under this Agreement shall be as follows:

(a) Salary. For all services rendered by the Executive under this Agreement, the Employer shall pay the Executive a salary (the "Salary") at the annual rate of Three Hundred Fifty-Nine Thousand Dollars ($359,000), subject to increase from time to time in the discretion of the Board of Directors or the Compensation Committee of the Board of Directors (the "Compensation Committee"). The Salary shall be payable in periodic installments in accordance with the Employer's usual practice for its senior executives.

(b) Bonus. The Executive shall be entitled to participate in an annual bonus program established by the Board of Directors or the Compensation Committee with such terms as may be established in the sole discretion of the Board of Directors or Compensation Committee, provided that the gross amount of such annual bonus paid to the Executive, if any, shall not exceed forty percent (40%) of the Executive's Salary for that calendar year. The bonus

payable with respect to calendar year 2005, if any, shall be pro-rated based on the days elapsed between the date hereof and December 31, 2005.

(c) Stock; Stock Options. The Executive acknowledges that, as of the Effective Date, the Executive owns 3,000,000 shares of the Employer's common stock. On or after the Effective Date, the Employer shall grant to Executive an option to purchase or a restricted stock agreement for 3,500,000 shares of the Employer's common stock (collectively, the "Option"). The Option will be issued pursuant to the Employer's 2005 Stock Option Plan (the "Option Plan"), and, except as expressly provided herein, will be subject to a stock option agreement in form and substance as is customarily issued by the Employer to its option grantees (the "Option Agreement") and/or a stock restriction agreement in the form and substance as is attached hereto as shall be approved by the Board of Directors . The Option Agreement shall provide, among other terms, as follows:

(i) an option to purchase 2,470,588 shares of common stock that shall vest on a quarterly basis at a rate of twenty-five percent (25%) per year and shall be fully vested as of the fourth anniversary of the Option Agreement;

(ii) an option to purchase 411,765 shares of common stock that shall vest as of the date the Employer initiates the first clinical trial in humans, provided, that if the Employer does not initiate such trial within fifteen (15) months of the Effective Date, such option will be cancelled, and upon such cancellation, such option shall be of no further force or effect;

(iii) an option to purchase 411,765 shares of common stock that shall vest as of the date the Employer files an NDA, provided, that if the Employer does not file an NDA within 5 years of the Effective Date, such option will be cancelled, and upon such cancellation, such option shall be of no further force or effect;

(iv) an option to purchase 205,882 shares of common stock that shall vest as of the date of the "launch of a partnered product", as hereinafter defined; and

(v) the Option shall fully vest as of the date of a Change of Control.

For purposes of this Agreement, the term NDA shall mean a new drug application that has been approved by the Board of Directors and filed with, and accepted by, the United States Food and Drug Administration. The Employer agrees that such approval of the Board of Directors shall not be unreasonably withheld.

For purposes of this Agreement, initiation of the first clinical trial in humans shall mean the date of enrollment of the first patient in a clinical trial that has been approved by the Board of Directors and that is conducted for a Company sponsored compound. The Employer agrees that such approval of the Board of Directors shall not be unreasonably withheld.

For purposes of this Agreement, "launch of a partnered product" shall mean the first sale by an unaffiliated third party of a pharmaceutical product incorporating intellectual property of the Employer and for which the Employer is entitled to receive a royalty payment under an agreement between the Employer and such party.

Notwithstanding the foregoing, if the Executive determines, upon advice of his tax professionals, that he would be in a better personal tax position to execute a restricted stock agreement rather than an option agreement, the parties hereto agree to execute the form restricted stock agreement attached hereto. The Executive shall have a reasonable time following the Effective Date to make this determination.

(d) Regular Benefits. The Executive shall also be entitled to participate in any employee benefit plans, medical insurance plans, life insurance plans, disability income plans, retirement plans, vacation plans, expense reimbursement plans and other benefit plans which the Employer may from time to time have in effect for employees at or above the level of Executive Vice President, as well as any benefits that may be made available to all or a majority of lower- level senior executives. Such participation shall be subject to the terms of the applicable plan documents, generally applicable policies of the Employer, applicable law and the discretion of the Board of Directors, the Compensation Committee or any administrative or other committee provided for in or contemplated by any such plan. Nothing contained in this Agreement shall be construed to create any obligation on the part of the Employer to establish any such plan or to maintain the effectiveness of any such plan which may be in effect from time to time.

(i) Vacation. Executive is entitled to paid vacation of twenty (20) days per year, or such greater number as may be provided in Employer's policy for senior executives, in addition to all holidays provided in such policies. The amount of accrued but unused vacation time payable to Executive upon termination of Executive's employment shall be calculated pro rata based on the number of months Executive worked in the year of termination.

(e) Taxation of Payments and Benefits. The Employer shall undertake to make deductions, withholdings and tax reports with respect to payments and benefits under this Agreement to the extent that it reasonably and in good faith believes that it is required to make such deductions, withholdings and tax reports. Payments under this Agreement shall be in amounts net of any such deductions or withholdings. Nothing in this Agreement shall be construed to require the Employer to make any payments to compensate the Executive for any adverse tax effect associated with any payments or benefits or for any deduction or withholding from any payment or benefit.

(f) Exclusivity of Salary and Benefits. The Executive shall not be entitled to any payments or benefits other than those provided under this Agreement.

5. Extent of Service. During the Executive's employment under this Agreement, the Executive shall, subject to the direction and supervision of the Board of Directors, devote the Executive's full business time, best efforts and business judgment, skill and knowledge to the advancement of the Employer's interests and to the discharge of the Executive's duties and responsibilities under this Agreement. The Executive shall not engage in any other business activity, except as may be approved by the Board of Directors; provided that nothing in this Agreement shall be construed as preventing the Executive from:

(a) investing the Executive's assets in any company or other entity in a manner not prohibited by Section 7(d) and in such form or manner as shall not require any

material activities on the Executive's part in connection with the operations or affairs of the companies or other entities in which such investments are made; or

(b) engaging in religious, charitable or other community or non-profit activities that do not impair the Executive's ability to fulfill the Executive's duties and responsibilities under this Agreement.

6. Termination Benefits. Unless otherwise specifically provided in this Agreement or otherwise required by law, all compensation and benefits payable to the Executive under this Agreement shall terminate on the date of termination of the Executive's employment.

(a) Termination Benefits. Notwithstanding the provisions of Section 3, if the Executive's employment is terminated by the Executive for Good Reason, or by the Executive for Good Reason after a Change of Control, or by the Employer without Cause, the Employer shall provide to the Executive the following termination benefits ("Termination Benefits"), subject to the Executive's agreement to a release of any and all legal claims in a form satisfactory to the Employer:

(i) payments, made in periodic installments over the course of eighteen months on the Employer's regular payroll dates for its senior executives, equivalent to the sum of (A) eighteen (18) months of the Executive's Salary at the rate in effect as of the date of termination pursuant to Section 4(a), and (B) the most recent bonus paid to the Executive by the Employer pursuant to Section 4(b); and

(ii) continuation of group health plan benefits for a period of eighteen (18) months, to the extent authorized by and consistent with 29 U.S.C. § 1161 et seq. (commonly known as "COBRA"), with the cost of the regular premium for such benefits shared in the same relative proportion by the Employer and the Executive as in effect on the date of termination.

(b) Taxes. Anything in this Agreement to the contrary notwithstanding, in the event that any payment or distribution by the Employer to or for the benefit of the Executive following termination, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, including but not limited to the Termination Benefits (the "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the following provisions shall apply:

(A) If the Severance Payments, reduced by the sum of (1) the Excise Tax and (2) the total of the Federal, state, and local income and employment taxes payable by Executive on the amount of the Severance Payments which are in excess of the Threshold Amount, are greater than or equal to the Threshold Amount, Executive shall be entitled to the full benefits payable under this Agreement.

(B) If the Threshold Amount is less than (x) the Severance Payments, but greater than (y) the Severance Payments reduced by the sum of (1) the Excise Tax and (2) the total of the Federal, state, and local income and employment taxes

on the amount of the Severance Payments which are in excess of the Threshold Amount, then the benefits payable under this Agreement shall be reduced (but not below zero) to the extent necessary so that the maximum Severance Payments shall not exceed the Threshold Amount. To the extent that there is more than one method of reducing the payments to bring them within the Threshold Amount, Executive shall determine which method shall be followed; provided that if Executive fails to make such determination within 15 days after the Employer has sent Executive written notice of the need for such reduction, the Employer may determine the amount of such reduction in its sole discretion.

For the purposes of this Section, "Threshold Amount" shall mean three times Executive's "base amount" within the meaning of Section 280G(b)(3) of the Code and the regulations promulgated thereunder less one dollar ($1.00); and "Excise Tax" shall mean the excise tax imposed by Section 4999 of the Code, and any interest or penalties incurred by Executive with respect to such excise tax.

The determination as to which of the alternative provisions of set forth above shall apply to Executive shall be made by a nationally recognized accounting firm selected by the Employer (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Employer and Executive within 15 business days of the date of termination of Executive's employment, if applicable, or at such earlier time as is reasonably requested by the Employer or Executive. For purposes of determining which of the alternative provisions of set forth above shall apply, Executive shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in the state and locality of Executive's residence on the date of termination of Executive's employment, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes. Any determination by the Accounting Firm shall be binding upon the Employer and Executive.

(c) Cause. Only the following shall constitute "Cause" for purposes of this Agreement:

(i) the commission by the Executive of criminal acts involving moral turpitude, deceit, dishonesty or fraud;

(ii) gross negligence, willful misconduct or insubordination of the Executive with respect to the Employer or any affiliate of the Employer;

(iii) material breach by the Executive of any of the Executive's obligations under this Agreement or under any other agreement Executive has entered into with the Employer; or

(iv) the inability of the Executive to perform the Executive's duties for a period of six (6) months or more as a result of a disability, provided that the Employer has a long-term disability insurance policy in place at such time which provides for payment of up to 60% of an eligible employee's salary and Executive qualifies for same.

If any question shall arise as to whether during any period the Executive is disabled so as to be unable to perform the Executive's duties, the Executive may, and at the request of the Employer shall, submit to the Employer a certification in reasonable detail by a physician selected by the Employer to whom the Executive or the Executive's guardian has no reasonable objection as to whether the Executive is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Executive shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Executive shall fail to submit such certification, the Employer's determination of such issue shall be binding on the Executive.

(d) Good Reason. Only the following shall constitute "Good Reason" prior to a Change of Control for purposes of this Agreement:

(i) a reduction of the Executive's salary, other than a reduction that (1) is based on the Employer's financial performance or (2) is similar to the reduction made to the salaries provided to all or most other senior executives of the Employer; or

(ii) a significant change in the Executive's responsibilities and/or duties which constitutes, when compared to the Executive's previous responsibilities and/or duties, a demotion; or

(iii) the relocation of the offices at which the Executive is principally employed to a location more than fifty (50) miles from such offices, which relocation is not approved by the Executive.

The Executive shall provide the Employer with reasonable notice and an opportunity to cure any of the events listed in this Section 6(d) and shall not be entitled to compensation pursuant to this Section 6 unless the Employer fails to cure within a reasonable period.

(e) Good Reason After Change of Control. Only the following shall constitute "Good Reason" after a Change of Control for purposes of this Agreement:

(i) a reduction of the Executive's salary after a Change of Control; or

(ii) a significant change in the Executive's responsibilities and/or duties which constitutes, when compared to the Executive's responsibilities and/or duties before the Change of Control, a demotion; or

(iii) the relocation of the offices at which the Executive is principally employed as of the Change of Control to a location more than fifty (50) miles from such offices, which relocation is not approved by the Executive.

The Executive shall provide the Employer with reasonable notice and an opportunity to cure any of the events listed in this Section 6(e) and shall not be entitled to compensation pursuant to this Section 6 unless the Employer fails to cure within a reasonable period.

(f) Change of Control. "Change of Control" shall mean the occurrence of one or more of the following events:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) becomes a "beneficial owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) (other than the Employer, any trustee or other fiduciary holding securities under an employee benefit plan of the Employer, or any corporation owned, directly or indirectly, by the stockholders of the Employer, in substantially the same proportions as their ownership of stock of the Employer), directly or indirectly, of securities of the Employer, representing fifty percent (50%) or more of the combined voting power of the Employer's then outstanding securities; or

(ii) persons who, as of the date of this Agreement, constituted the Employer's Board of Directors (the "Incumbent Board") cease for any reason including, without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority of the Board of Directors, provided that any person becoming a director of the Employer subsequent to the date of this Agreement whose election was approved by at least a majority of the directors then comprising the Incumbent Board shall, for purposes of this Agreement, be considered a member of the Incumbent Board; or

(iii) the stockholders of the Employer approve a merger or consolidation of the Employer with any other corporation or other entity, other than (1) a merger or consolidation which would result in the voting securities of the Employer outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Employer or such surviving entity outstanding immediately after such merger or consolidation or (2) a merger or consolidation effected to implement a recapitalization of the Employer (or similar transaction) in which no "person" (as hereinabove defined) acquires more than fifty percent (50%) of the combined voting power of the Employer's then outstanding securities; or

(iv) the stockholders of the Employer approve a plan of complete liquidation of the Employer or an agreement for the sale or disposition by the Employer of all or substantially all of the Employer's assets.

7. Confidential Information, Noncompetition and Cooperation.

(a) Confidential Information. As used in this Agreement, "Confidential Information" means information belonging to the Employer which is of value to the Employer in the course of conducting its business and the disclosure of which could result in a competitive or other disadvantage to the Employer. Confidential Information includes, without limitation, financial information, reports, and forecasts; inventions, improvements and other intellectual property; trade secrets; know-how; designs, processes or formulae; software; market or sales information or plans; customer lists; and business plans, prospects and opportunities (such as

possible acquisitions or dispositions of businesses or facilities) which have been discussed or considered by the management of the Employer. Confidential Information includes information developed by the Executive in the course of the Executive's employment by the Employer, as well as other information to which the Executive may have access in connection with the Executive's employment. Confidential Information also includes the confidential information of others with which the Employer has a business relationship. Notwithstanding the foregoing, Confidential Information does not include information in the public domain, unless due to breach of the Executive's duties under Section 7(b).

(b) Confidentiality. The Executive understands and agrees that the Executive's employment creates a relationship of confidence and trust between the Executive and the Employer with respect to all Confidential Information. At all times, both during the Executive's employment with the Employer and after its termination, the Executive will keep in confidence and trust all such Confidential Information, and will not use or disclose any such Confidential Information without the written consent of the Employer, except as may be necessary in the ordinary course of performing the Executive's duties to the Employer.

(c) Documents, Records, etc. All documents, records, data, apparatus, equipment and other physical property, whether or not pertaining to Confidential Information, which are furnished to the Executive by the Employer or are produced by the Executive in connection with the Executive's employment will be and remain the sole property of the Employer. The Executive will return to the Employer all such materials and property as and when requested by the Employer. In any event, the Executive will return all such materials and property immediately upon termination of the Executive's employment for any reason. The Executive will not retain with the Executive any such material or property or any copies thereof after such termination. The Executive will not retain with the Executive any such material or property or any copies thereof after such termination without the Employer's knowledge and consent. The Employer's consent shall not be unreasonably withheld with regard to personnel information related exclusively to Executive's compensation or evaluations of Executive's performance.

(d) Noncompetition and Nonsolicitation. During the Executive's employment with the Employer and for twelve (12) months thereafter (or during the Termination Benefits Period, if longer), the Executive (i) will not, directly or indirectly, whether as owner, partner, shareholder, consultant, agent, employee, co-venturer or otherwise, engage, participate, assist or invest in any Competing Business (as hereinafter defined); (ii) will refrain from directly or indirectly employing, attempting to employ, recruiting or otherwise soliciting, inducing or influencing any person to leave employment with the Employer (other than terminations of employment of subordinate employees undertaken in the course of the Executive's employment with the Employer); and (iii) will refrain from soliciting or encouraging any customer or supplier to terminate or otherwise modify adversely its business relationship with the Employer. The Executive understands that the restrictions set forth in this Section 7(d) are intended to protect the Employer's interest in its Confidential Information and established employee, customer and supplier relationships and goodwill, and agrees that such restrictions are reasonable and appropriate for this purpose. For purposes of this Agreement, the term "Competing Business" shall mean a business conducted anywhere in the world whose primary business is the development, manufacture or marketing of oral drug delivery technologies. Notwithstanding the

foregoing, the Executive may own up to one percent (1%) of the outstanding stock of a publicly held corporation which constitutes or is affiliated with a Competing Business.

(e) Third-Party Agreements and Rights. The Executive hereby confirms that the Executive is not bound by the terms of any agreement with any previous employer or other party which restricts in any way the Executive's use or disclosure of information or the Executive's engagement in any business. The Executive represents to the Employer that the Executive's execution of this Agreement, the Executive's employment with the Employer and the performance of the Executive's proposed duties for the Employer will not violate any obligations the Executive may have to any such previous employer or other party. In the Executive's work for the Employer, the Executive will not disclose or make use of any information in violation of any agreements with or rights of any such previous employer or other party, and the Executive will not bring to the premises of the Employer any copies or other tangible embodiments of non-public information belonging to or obtained from any such previous employment or other party.

(f) Litigation and Regulatory Cooperation. During and after the Executive's employment, the Executive shall cooperate fully with the Employer in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Employer which relate to events or occurrences that transpired while the Executive was employed by the Employer. The Executive's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Employer at mutually convenient times. During and after the Executive's employment, the Executive also shall cooperate fully with the Employer in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Executive was employed by the Employer. The Employer shall reimburse the Executive for any reasonable out-of-pocket expenses incurred in connection with the Executive's performance of obligations pursuant to this Section 7(f). To the extent the Employer has control over scheduling, Employer shall use its best efforts to schedule all matters requiring the Executive's participation at times that do not result in a financial burden to Executive or adversely impact his subsequent employment.

(g) Injunction. The Executive agrees that it would be difficult to measure any damages caused to the Employer which might result from any breach by the Executive of the promises set forth in this Section 7, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, subject to Section 8 of this Agreement, the Executive agrees that if the Executive breaches, or proposes to breach, any portion of this Agreement, the Employer shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Employer.

8. Arbitration of Disputes. Any controversy or claim arising out of or relating to this Agreement or the breach thereof or otherwise arising out of the Executive's employment or the termination of that employment (including, without limitation, any claims of unlawful employment discrimination whether based on age or otherwise) shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or,

in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in Washington, D.C. in accordance with the Employment Dispute Resolution Rules of the AAA, including, but not limited to, the rules and procedures applicable to the selection of arbitrators. In the event that any person or entity other than the Executive or the Employer may be a party with regard to any such controversy or claim, such controversy or claim shall be submitted to arbitration subject to such other person or entity's agreement. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This Section 8 shall be specifically enforceable. Notwithstanding the foregoing, this Section 8 shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or a preliminary injunction in circumstances in which such relief is appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Section 8. It is understood that in the event that (a) Executive initiates an arbitration proceeding for the purpose of challenging a decision by Employer to terminate Executive's employment for Cause (a "Cause Arbitration"), or (b) Employer initiates an arbitration proceeding for the purpose of challenging a decision by Executive to resign for Good Reason, that time is of the essence and that arbitration of such issues, and the determination of whether Executive is entitled to Termination Benefits must be completed as soon as practicable. To the extent permitted by law, Employer shall be responsible for any fees charged by AAA for a Cause Arbitration unless the arbitrator orders otherwise as a remedy. The arbitrator will have the power to award all damages that would otherwise be available in a court of law. The arbitrator shall also award the prevailing party its reasonable costs and attorneys fees unless the arbitrator finds that the non-prevailing party acted in good faith and with a reasonable belief that its conduct was not in violation of this Agreement.

9. Consent to Jurisdiction. To the extent that any court action is permitted consistent with or to enforce Section 8 of this Agreement, the parties hereby consent to the jurisdiction of the courts of the State Maryland and the United States District Court for the District of Maryland. Accordingly, with respect to any such court action, the Executive (a) submits to the personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

10. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to any related subject matter; provided, that this Agreement shall not supersede the Option Agreement. The parties agree that in the event of any conflict between the terms of this Agreement and the terms of the Option Agreement, the terms of the Option Agreement shall control.

11. Assignment; Successors and Assigns, etc. Neither the Employer nor the Executive may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other party; provided that the Employer may assign its rights under this Agreement without the consent of the Executive in the event that the Employer shall effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation, partnership, organization or other entity. This Agreement shall

inure to the benefit of and be binding upon the Employer and the Executive, their respective successors, executors, administrators, heirs and permitted assigns.

12. Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

14. Notices. Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Executive at the last address the Executive has filed in writing with the Employer or, in the case of the Employer, at its main offices, attention of the Chief Financial Officer, and shall be effective on the date of delivery in person or by courier or three (3) days after the date mailed.

15. Amendment. This Agreement may be amended or modified only by a written instrument signed by the Executive and by a duly authorized representative of the Employer.

16. Governing Law. This is a Maryland contract and shall be construed under and be governed in all respects by the laws of the State of Maryland, without giving effect to the conflict of laws principles of such State. With respect to any disputes concerning federal law, such disputes shall be determined in accordance with the law as it would be interpreted and applied by the United States Court of Appeals for the Fourth Circuit.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by the Employer, by its duly authorized officer, and by the Executive, as of the date first above written.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ David Theil
Name: David Theil
Title: Chief Financial Officer

/s/ Jack Khattar
Jack Khattar

Exhibit 10.4

SUPERNUS PHARMACEUTICALS, INC.

STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "Agreement") is made as of the 22nd day of December 22,, 2005 (the "Effective Date"), by and between Supernus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and Jack Khattar (the "Stockholder").

RECITALS:

WHEREAS, the Stockholder is a founder and holder of an aggregate of 3,000,000 shares of common stock, $.001 par value (the "Common Stock"), of the Company; and

WHEREAS, in consideration of Stockholder's full time employment with the Company the Company desires to grant to Stockholder an additional **3,500,000** shares of Common Stock subject to those restrictions as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and such other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Grant of Stock. The Company hereby grants to the Stockholder, pursuant to the Company's 2005 Stock Plan (the "Plan"), an aggregate of 3,500,000 shares (the "Shares") of Common Stock of the Company subject to the terms and conditions of this Agreement and the Plan. Upon execution of this Agreement by the Company and the Stockholder and the approval of the grant by the Board of Directors, the Company will promptly issue a certificate or certificates registered in the Stockholder's name representing the Shares, with such certificates to be held in escrow until such Shares shall be Unrestricted Stock. The Stockholder shall be solely responsible for paying all personal income taxes due in connection with the Shares.

2. Buy Back Rights of the Company. If the Stockholder's Business Relationship with the Company ceases, voluntarily or involuntarily, with or without "Cause" (as defined below), the Company shall have the right and option to purchase for a period of 90 days from date of cessation of the Stockholder's Business Relationship with the Company, and if the Company exercises such right, the Stockholder shall be required to sell to the Company, any or all of the shares of Restricted Stock (as defined below) of the Company. The purchase price of such shares of Restricted Stock shall be **[$0.01].** If at any time the Company elects to purchase Restricted Stock pursuant to this Section 2, the closing of such purchase shall take place at the offices of the Company within 30 days after delivery of notice to the Stockholder of the Company's election to purchase such shares of Restricted Stock. The purchase price for such shares shall be paid by delivery of a bank cashier's check or certified check. Upon the mailing

of a check in payment of the purchase price in accordance with the terms hereof, the Company shall become the legal and beneficial owner of the shares of Restricted Stock being repurchased by the Company and all rights and interests therein or relating thereto, and the Company shall have the right to retain and transfer to its own name or cancel the number of shares of Restricted Stock being repurchased by the Company.

2.1. For purposes of this Agreement:

(a) "Cause" shall have the same meaning as set forth in that certain Employment Agreement by and between the Stockholder and the Company dated December 22, 2005.

(b) "Business Relationship" means service to the Company or its successors in the capacity of an employee, officer, director or consultant.

2.2. For purposes of this Agreement, if the Stockholder has continuously maintained a Business Relationship with the Company through the vesting dates specified on Exhibit A attached hereto, Restricted Stock shall become Unrestricted Stock (or shall vest) on such dates in an amount equal to the number of shares set forth opposite the applicable date on Exhibit A. "Restricted Stock" shall be subject to the repurchase provisions described herein unless and until they becomes shares of Unrestricted Stock. "Unrestricted Stock" shall mean those Stockholder's shares of Common Stock granted hereunder that are not Restricted Stock. Notwithstanding anything to the contrary, in the event the Stockholder's Business Relationship with the Company ceases, voluntarily or involuntarily, with or without Cause, all Restricted Stock existing at the time of said termination shall remain Restricted Stock and shall not become Unrestricted Stock until a determination is made by the Company, as the case may be, to exercise or not its option to repurchase the shares of Restricted Stock. In the event the Company chooses not to exercise its option to purchase, the Board of Directors of the Company may determine to accelerate the vesting of the remaining shares of Restricted Stock such that all or any portion of the remaining shares of Restricted Stock shall vest and become Unrestricted Stock.

3. No Special Employment Rights. Nothing contained in the Plan or this Agreement shall be construed or deemed by any person under any circumstances to bind the Company to continue the employment of the Stockholder for the period within which this Agreement may apply or for any other period.

4. Transfer Restrictions on Restricted and Unrestricted Stock. This Agreement is subject to the requirement that Stockholder shall be subject to all of the transfer restrictions set forth in the Plan including but not limited those requirements referred to in Section 13 of the Plan entitled "Stock Transfer Restrictions," "Right of First Refusal" and "Drag Along Rights," and in Section 21 of the Plan entitled "Lock-Up," and as may be set forth in the by-laws of the Company. The Stockholder agrees to be bound by these restrictions and further agrees, upon the request of the Company to execute any further documentation necessary to evidence said agreement. A Stockholder's failure to execute same, at the Company's request, shall cause the Common Stock granted herein to be immediately null and void. The Company shall be free to place a legend on the back of the underlying security specifying the foregoing restrictions.

5. Investment Representations; Legends; Limitations on Certain Dispositions

5.1. Representations. The Stockholder represents, warrants and covenants that:

(i) Any Common Stock granted herein shall be acquired for the Stockholder's account for investment only and not with a view to, or for sale in connection with, any distribution of the shares in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any rule or regulation under the Securities Act.

(ii) The Stockholder has had such opportunity as he or she has deemed adequate to obtain from representatives of the Company such information as is necessary to permit the Stockholder to evaluate the merits and risks of his or her investment in the Company.

(iii) The Stockholder is able to bear the economic risk of holding shares of Common Stock for an indefinite period.

(iv) The Stockholder understands that (A) the shares granted herein will not be registered under the Securities Act and are "restricted securities" within the meaning of Rule 144 under the Securities Act; (B) except as otherwise agreed as a "permitted transfers" in that certain Stock Restriction Agreement executed by and among the Company and its shareholders dated on or about the first date above written, as may be amended from time to time, such shares cannot be sold, transferred or otherwise disposed of unless they are subsequently registered under the Securities Act or an exemption from registration is then available; (C) in any event, an exemption from registration under Rule 144 or otherwise under the Securities Act may not be available for at least one year and even then will not be available unless a public market then exists for the Common Stock, adequate information concerning the Company is then available to the public and other terms and conditions of Rule 144 are complied with; and (D) there is now no registration statement on file with the Securities and Exchange Commission with respect to any stock of the Company and the Company has no obligation or current intention to register any shares acquired herein under the Securities Act.

5.2 Legends on Stock Certificates. All stock certificates representing shares of Common Stock issued to the Stockholder shall have affixed thereto legends substantially in the following forms, in addition to any other legends required by applicable law:

"The securities represented by this certificate have not been registered under the Securities Act of 1933 and may not be transferred, sold or otherwise disposed of in the absence of an effective registration statement with respect thereto under the Securities Act of 1933, or an opinion of counsel satisfactory to the Company to the effect that registration under such Act is not required."

"The securities represented by this certificate are subject to certain rights of repurchase and restrictions on transfer set forth in the Supernus' 2005 Stock Plan as of December 22, 2005 and in the Stock Restriction Agreement between the Company and the holder hereof pursuant to

which such securities were issued. A copy of such Agreement will be provided free of charge to the holder of this certificate upon written request therefor addressed to the Company."

"The securities represented by this certificate are subject to voting agreements as set forth in a Stockholders' Voting Agreement as amended from time to time, a copy of which the Company will furnish to the holder of this certificate upon request and without charge."

6. Failure to Deliver Shares. If the Stockholder becomes obligated to sell any Restricted Stock to the Company under this Agreement and fails to deliver such Restricted Stock in accordance with the terms of this Agreement, the Company may, at its option, in addition to all other remedies it may have, send to the Stockholder the purchase price for such Restricted Stock as is herein specified. Thereupon, the Company upon written notice to the Stockholder, (a) shall cancel on its books the certificate or certificates representing the Restricted Stock to be sold and (b) shall identify such canceled shares of the Company as "Treasury Shares", and thereupon all of the Stockholder's rights in and to such Restricted Stock shall terminate.

7. Specific Enforcement. The Stockholder expressly agrees that the Company will be irreparably damaged if this Agreement is not specifically enforced. Upon a breach or threatened breach of the terms, covenants and/or conditions of this Agreement by the Stockholder, the Company shall, in addition to all other remedies, each be entitled to a temporary or permanent injunction, without showing any actual or irreparable damage, and/or a decree for specific performance, in accordance with the provisions hereof.

8. Miscellaneous

8.1. Except as provided herein, this Agreement may not be amended or otherwise modified unless evidenced in writing and signed by the Company and the Stockholder.

8.2. All notices under this Agreement shall be mailed or delivered by hand to the parties at their respective addresses set forth beneath their names below or at such other address as may be designated in writing by either of the parties to one another.

8.3. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Date of Issue: (date of Board approval)

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ David Theil
Name: David Theil
Title: Chief Financial Officer

STOCKHOLDER'S ACCEPTANCE

The undersigned hereby accepts the foregoing issuance of shares and agrees to the terms and conditions thereof. The undersigned hereby acknowledges receipt of a copy of the Company's 2005 Stock Plan as of December 22, 2005.

STOCKHOLDER:

/s/ Jack Khattar

Jack Khattar
Address:105 Alderwood Drive
Gaithersburg, Maryland 20878

EXHIBIT A

VESTING SCHEDULE FOR RESTRICTED STOCK TO BECOME UNRESTRICTED STOCK

Name of purchaser (the "Stockholder"):	Jack Khattar
Date:	December 22, 2005
Number of shares granted hereunder:	3,500,000
Number of Shares that are Unrestricted Stock on the Vesting Start Date:	0
Number of Shares that are Restricted Stock on the Vesting Start Date:	3,500,000
Vesting Start Date:	December 22, 2005
Vesting Schedule:	
Three months after the Vesting Start Date:	154,423 Shares
The first business day of each of the next 15 3-month periods thereafter	An additional 154,411 Shares

In addition, 411,765 shares of common stock that shall vest and become Unrestricted Stock as of the date the Company initiates the first clinical trial in humans (as defined in the Employment Agreement referenced below), provided, that if the Company does not initiate such trial within fifteen (15) months of December 22, 2005, such vesting will be cancelled, and upon such cancellation, such vesting shall be of no further force or effect;

411,765 shares of common stock that shall vest and become Unrestricted Stock as of the date the Company files an NDA, provided, that if the Company does not file an NDA (as defined in the Employment Agreement referenced below) within 5 years of December 22, 2005, such vesting will be cancelled, and upon such cancellation, such vesting shall be of no further force or effect; and

205,882 shares of common stock that shall vest and become Unrestricted Stock as of the date of the "launch of a partnered product", as defined in that certain Employment Agreement by and between the Company and Jack Khattar, dated December 22, 2005 (the "Employment Agreement"); and

All Restricted Stock hereunder shall fully vest and become Unrestricted Stock as of the date of a Change of Control as defined in Paragraph 6(f) of the Employment Agreement.

CONFIDENTIAL

STANDARD FORM MULTI-TENANT NET LEASE (Non-California)

THIS LEASE (this "**Lease**") is made as of April 19, 1999 ("**Effective Date**"), by and between ARE ACQUISITIONS, LLC, a Delaware limited liability company ("**Landlord**") and SHIRE LABORATORIES INC., a Delaware corporation ("**Tenant**").

1. Definitions and Basic Terms.

1.1. As used in this Lease, the following terms shall have the meanings set forth below, subject, in each case, to the remaining terms and conditions of this Lease.

1.1.1 **"Premises":** The real property and improvements located at 1550 East Gude Drive, Rockville, Maryland, including all landscaping, parking facilities and other improvements and appurtenances related thereto.

1.1.2 **"Basic Annual Rent":**

Period	Basic Monthly Rent	Basic Annual Rent
Commencement Date - 4/30/99	$ 54,704.65	$ 656,455.80
5/1/99 - 3/31/2000	$ 56,345.79	$ 676,149.48
4/1/2000 - 4/30/2001	$ 59,704.17	$ 716,450.04(1)

1.1.3 **"Landlord's Work":** The work, if any, described on Exhibit "B" attached hereto.

1.1.4 **"Permitted Use":** Research and development, scientific laboratory, related general office and administrative functions, cGMP manufacturing, distribution, warehouse and repository space and uses consistent with Section 10 hereof.

1.1.5 **"Rent Adjustment Percentage":** 3%

1.1.6 **"Security Deposit Amount":** Fifty-Four Thousand Seven Hundred Four And 65/100 Dollars ($54,704.65).

1.1.7 **"Target Term Commencement Date":** The Effective Date

1.1.8 **"Tenant's Broker":** Scheer Partners, Inc.

1.1.9 **"Term Expiration Date":** Five (5) years from the first (1st) day of the month next succeeding the month in which the Term Commencement Date occurs, subject to extension or earlier termination as provided herein.

1.2. For the convenience of the parties, certain additional basic provisions of this Lease are set forth in this Section 1.2. The provisions set forth herein are subject to the remaining terms and conditions of this Lease and are to be interpreted in light of such remaining terms and conditions.

1.2.1 Initial Monthly Installment of Basic Annual Rent: $54,704.65

(1) For 12 months.

1.2.2 Rentable Area of Premises: 44,500 sq. ft.

1.2.3 Address for Rent Payment:

135 N. Los Robles Avenue, Suite 250
Pasadena, CA 91101
Attention: Accounts Receivable

1.2.4 Address for Notices to Landlord:

135 N. Los Robles Avenue, Suite 250
Pasadena, CA 91101
Attention: General Counsel

1.2.5 Address for Notices to Tenant:

1550 East Gude Drive
Rockville, MD 20850
Attn.: Chief Executive Officer

1.3. The following Exhibits and Addenda are attached hereto and incorporated herein by this reference:

EXHIBIT "A"	DESCRIPTION OF PREMISES
EXHIBIT "B"	INTENTIONALLY OMITTED
EXHIBIT "C"	cGMP FACILITY
EXHIBIT "D"	LEGAL DESCRIPTION OF PROPERTY ON WHICH PREMISES LOCATED
EXHIBIT "E"	ACKNOWLEDGMENT OF COMMENCEMENT DATE
EXHIBIT "F"	RULES AND REGULATIONS
EXHIBIT "G"	INTENTIONALLY OMITTED
EXHIBIT "H"	FORM OF NONDISTURBANCE AGREEMENT
ADDENDUM	RIGHT TO EXTEND TERM

2. Lease of Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and subject to all of the terms and conditions hereof, the Premises.

3. Term. This Lease shall take effect upon the Effective Date and, except as specifically otherwise provide within this Lease, each of the provisions hereof shall be binding upon and inure to the benefit of Landlord and Tenant, and each of their respective successors and permitted assigns, from the Effective Date. The term of this Lease (the "Term") will be the period from the "Term Commencement Date" (as defined in Section 4.2) through the Term Expiration Date, as the same may be terminated or extended as provided herein.

4. Possession and Commencement Date.

4.1. Tenant is currently in possession of the entire Premises pursuant to a Sublease Agreement, dated March 29, 1995 (the **"Sublease"**) with Quest Diagnostics Inc. (formerly Corning Clinical Laboratories, Inc.). Quest Diagnostics Inc. (**"Quest"**) is the master tenant pursuant to that certain Office Lease, dated July 13, 1987 (the **"Master Lease"**), between Landlord (as successor to Ardenwood Properties, N.V.) and Quest (as successor to MetPath, Inc.). Landlord expects to enter into a Termination Agreement with Quest (the **"Termination Agreement")** substantially contemporaneously herewith pursuant to which the Master Lease (and, as a result, the Sublease) shall terminate and be of no further force or effect, and the term of this Lease shall thereupon commence. In the event that the Termination Agreement has not been entered into by Landlord and Quest on or before April 30, 2000, Tenant's Sublease Agreement dated March 29, 1995, shall remain in full force and effect until expiration or earlier termination of such Sublease Agreement, whereupon

this Lease shall become effective for the period April 1, 2000 through and including the Term Expiration Date, subject to Tenant's Extension Right set forth in that certain Right to Extend Term Addendum attached hereto.

4.2. The **"Term Commencement Date"** shall be the effective date of the Termination Agreement, a copy of which shall be delivered by Landlord to Tenant after execution of such Termination Agreement by the parties thereto. Upon request of Landlord, Tenant shall execute and deliver a written acknowledgment of the Term Commencement Date and the Term Expiration Date when such dates are established and shall attach the acknowledgment to this Lease as part of Exhibit "E"; provided however, Tenant's failure to execute and deliver such acknowledgment shall not affect Landlord's rights hereunder.

4.3. Upon the Term Commencement Date, Tenant shall furnish to Landlord evidence satisfactory to Landlord that insurance coverages required of Tenant under the provisions of Article 21 are in effect.

4.4. Access to and possession of areas of the Premises necessary for utilities, services, safety and operation of the Premises is reserved to Landlord.

5. Rent.

5.1. Tenant agrees, commencing on the Term Commencement Date, to pay Landlord as basic annual rent (**"Basic Annual Rent"**) for the Premises the Initial Basic Annual Rent, subject to the rental increases provided in Section 6 hereof. Basic Annual Rent shall be due and payable in equal monthly installments, in advance, on the first day of each and every calendar month during the Term. The amount of the monthly installment due prior to the first "Rent Adjustment Date" (as hereinafter defined) is set forth in Section 1.1.2. Landlord and Tenant agree that the rentable area of the Premises, for all purposes of this Lease, is 44,500 square feet.

5.2. In addition to Basic Annual Rent, Tenant agrees to pay to Landlord as additional rent (**"Additional Rent"**), at the times hereinafter specified in this Lease (i) "Supplemental Rent" (as hereinafter defined), and (ii) any and all other amounts that Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation, Reimbursable Operating Expenses any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period.

5.3. Basic Annual Rent and Additional Rent shall together be denominated "Rent". Rent shall be paid to Landlord, without abatement, deduction, or offset, in lawful money of the United States of America, at the office of Landlord as set forth in Section 1.2.4, or to such other person or at such other place as Landlord may from time designate in writing. In the event the Term commences or ends on a day other than the first day of a calendar month, then the Rent for such fraction of a month shall be prorated for such period on the basis of a thirty (30) day month and shall be paid at the then current rate for such fractional month.

5.4. As used herein, **"Supplemental Rent"** shall mean a monthly amount determined by fully amortizing the leasing commission paid by Landlord to Tenant's Broker in an amount equal to Forty Thousand Dollars ($40,000) over the initial Term of this Lease, with interest at 12% per annum compounded monthly. Tenant shall have the right, upon obtaining a full release of Landlord and Landlord's affiliates of any and all liability for such leasing commission due Tenant's Broker, to pay such leasing commission directly to Tenant's Broker, in which event there shall be no Supplemental Rent due under this Section 5.4

6. Rent Adjustments. Commencing May 1, 2001, and on each anniversary thereof during the Term thereafter, Basic Annual Rent shall be increased by multiplying the Basic Annual Rent payable immediately before such adjustment by the Rent Adjustment Percentage and adding the resulting amount to the Basic Annual Rent payable immediately before such adjustment. Basic Annual Rent, as so adjusted, shall thereafter be due as provided herein.

7. Operating Expenses.

7.1. Landlord shall pay all impositions of every kind and nature imposed by any federal, state, regional, municipal, local or other governmental authority or agency (each, a "**Governmental Authority**") in connection with the ownership, operation or use of all or any portion of the Premises, including, without limitation, property tax costs consisting of real and personal property taxes and assessments (including amounts due under any improvement bond upon the Premises, including the parcel or parcels of real property upon which the Premises is located or assessments levied in lieu thereof); any tax on or measured by gross rentals received from the rental of space in the Premises , or tax based on the square footage of the Premises as well as any parking charges, utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any Governmental Authority in connection with the use or occupancy of the Premises or the parking facilities serving the Premises; any tax on this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises; any fee for a business license to operate an office building; any possessory taxes charged or levied in lieu of real estate taxes; and any expenses, including, without limitation, the cost of third party attorneys or experts, reasonably incurred by Landlord in seeking reduction by the taxing authority of the applicable taxes, less tax refunds obtained as a result of an application for review thereof (collectively hereinafter **"Impositions"**); provided, however, that Impositions shall not include any net income, franchise, capital stock, estate or inheritance taxes payable by Landlord, unless any such tax is imposed on Landlord in lieu of any of the taxes included in Impositions, nor shall tenant be liable for tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payment and/or to file any tax or informational returns when due. The provisions of this Section 7.1 shall survive termination of this Lease. In addition, Landlord shall pay for insurance premiums, including premiums for public liability, property casualty, earthquake and environmental coverages carried by Landlord on the Premises, and the portion, if any, of insured losses representing the deductible amount under any such insurance policy (the "**Premiums**").

7.1.1 Landlord shall deliver to Tenant a written estimate of the Impositions and Premiums (the **"Reimbursable Operating Expenses"**) for each calendar year (the **"Annual Estimate"**), which may be revised by Landlord from time to time during such calendar year. During each month of the Term, on the same date that the monthly installment of Basic Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as reasonably estimated by Landlord from time to time, of Reimbursable Operating Expenses for the Premises. Payments of Reimbursable Operating Expenses for any fractional calendar month shall be prorated.

7.1.2 Within 90 days after the end of each calendar year (or such longer period as may be reasonably required), Landlord shall furnish to Tenant a statement (an **"Annual Statement"**) showing in reasonable detail: (a) the total actual cost of Reimbursable Operating Expenses for the previous calendar year, and (b) the total cost of Tenant's payments in respect of Reimbursable Operating Expenses for such year. If actual Reimbursable Operating Expenses for such year exceeds Tenant's payments of Reimbursable Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within ten (10) business days of Landlord's delivery of the Annual Statement. If Tenant's payments of Reimbursable Operating Expenses for such year exceed Tenant's actual Reimbursable Operating Expenses for such year Landlord shall pay the excess to Tenant within 30 days after delivery of such Annual Statement. Reimbursable Operating Expenses for partial calendar years during the Term hereof shall be prorated. The Annual Statement shall be final and binding upon Tenant unless Tenant, within 30 days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefor.

7.2. Tenant shall, at its expense, maintain, repair and operate the Premises, including, by way of examples and not as a limitation upon the generality of the foregoing: make (or cause to be made) repairs and replacements to the Premises as appropriate to maintain the Premises in good condition and repair consistent with the condition of the Premises as of the date hereof; pay all costs for the Premises for utilities, sewer fees, cable T.V., trash collection, cleaning (including windows), heating, ventilation, air-conditioning, security

services and devices, building supplies; subject to Section 7.4 hereof, maintain all grounds, private roadways, sidewalks, curbs, drives and parking areas situated within, or appurtenant to, the Premises in good condition, repair and working order; maintain all landscaping consistent with Landlord's other properties in the immediate geographical area; maintain and replace equipment utilized for operation and maintenance of the Premises; pay license, permit and inspection fees, sales, use and excise taxes on goods and services purchased by Tenant in connection with the operation, maintenance or repair of the Premises; comply with any applicable laws or hazardous waste remediation rules or regulations as described in Section 39 hereof; pay amounts due under any service contracts; and pay the costs of services of independent contractors retained to do work of nature or type herein referenced. All repairs and replacements shall be at least equivalent in quality to the original work. Tenant will not take or omit to take any action the taking or omission of which might materially impair the value or the usefulness of the Premises or any part thereof or commit any waste of the Premises or any part thereof.

7.3. Landlord shall have the right to inspect the Premises as provided herein from time-to-time and shall give Tenant notice of any maintenance required to be performed by Tenant hereunder. If Tenant shall fail to perform any such maintenance or to pay when due any amounts payable by Tenant under this Section 7, Landlord shall have the right, but not the obligation, to perform such obligation or to pay such amounts after written notice to Tenant and the lapse of thirty (30) days (other than in the case of an emergency, in which event no prior notice or Tenant cure period shall be required) and Tenant's failure to fully perform such obligation or pay such amount. The cost of any such performance or the amount of any such payment by Landlord shall constitute Additional Rent due by Tenant to Landlord within ten (10) Business Days of written demand therefor.

7.4. Notwithstanding the foregoing, Tenant shall not be responsible for capital repairs of the exterior walls, structural interior partitions, foundation or other structural portions of the Premises at any time, or for the water tight integrity of the roof and covering materials and the private roadways, sidewalks, curbs, drives and parking areas situated within, or appurtenant to, the Premises before April 1, 2000, unless such repairs are required in whole or in part because of any act, neglect, fault of or omissions of any duty by Tenant, its agents, servants, employees or invitees. Landlord and Tenant agree: (i) that if the roof of the Premises requires replacement, Landlord will pay one half of the cost of such replacement, and (ii) if substantially all of the parking lot must be repaved (but not merely sealed, striped or otherwise maintained) at any time during an Extension Term hereunder, Landlord will pay one half of the cost of such repaving, which costs, under either clause (i) or (ii), shall be competitively bid and approved by Landlord and shall be paid by Landlord as such costs are incurred.

8. **[Intentionally omitted]**

9. Security Deposit.

9.1. Tenant shall deposit with Landlord on or before the Commencement Date of this Lease a security deposit (together with all interest earned thereon, the "**Security Deposit**") in an amount equal to the Security Deposit Amount, which Security Deposit shall be held by Landlord as security for the performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term. If Tenant defaults with respect to any provision of this Lease, including, without limitation, any provision relating to the payment of Rent, Landlord shall have the right, but not the obligation, to use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, upon written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the Security Deposit Amount, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general fund, but Tenant shall be entitled to any interest on the Security Deposit (to be credited to and added to the Security Deposit) at the rate as may be actually earned thereon by Landlord from time to time but no less often than annually. Tenant shall provide landlord or its designee with such

information and instruments (including, without limitation, Tenant's taxpayer identification number) as Landlord may reasonably require in order to maintain the Security Deposit in an interest-bearing account.

9.2. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the filing of such proceedings.

9.3. Landlord shall deliver the unapplied portion of the Security Deposit to any purchaser of Landlord's interest in the Premises and thereupon Landlord shall be discharged from any and all further liability with respect to the Security Deposit. This provision shall also apply to any subsequent transfers.

9.4. If as of the expiration of the Term, Tenant shall have surrendered the Premises in the condition required by this Lease and shall have paid all Rent, the Security Deposit, or any balance thereof, shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within ninety (90) days after the expiration or earlier termination of this Lease.

10. Use.

10.1. Tenant shall use the Premises exclusively for the Permitted Use and shall not use the Premises, or permit or suffer the Premises to be used, for any other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

10.2. Tenant shall not use or occupy the Premises in violation of any federal, state and local laws and regulations, zoning ordinances, or the certificate of occupancy issued for the Premises, and shall, upon five (5) days' written notice from Landlord, discontinue any use of the Premises which is declared or claimed by any Governmental Authority having jurisdiction to be a violation of any law, regulation or zoning ordinance or of such certificate of occupancy, or which in the reasonable opinion of Landlord violates any law, regulation or zoning ordinance or the certificate of occupancy. Tenant shall comply with any direction of any Governmental Authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupancy thereof.

10.3. Tenant shall not do or permit to be done anything outside the scope of the Permitted Use that will invalidate any fire, environmental, extended coverage or any other insurance policy covering all or any portion of the Premises. The use specified in Section 1.1.4 hereof is in compliance with Landlord's current insurance on the Premises. Tenant shall comply with all rules, orders, regulations, and requirements of the insurers of the Premises and shall reimburse Landlord promptly upon demand for any additional premium charged for any such policy by reason of Tenant's use of the Premises.

10.4. Upon termination of this Lease, Tenant shall return to Landlord all keys to offices and restrooms furnished to, or otherwise procured by, Tenant.

10.5. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, (i) attach any awnings or other projection to any outside wall of the Premises, (ii) attach, hang or use any curtains, blinds, shades or screens to, in connection with, any window or door of the Premises other than Landlord's standard window coverings, (iii) coat or otherwise sunscreen the interior or exterior of any windows, (iv) place any bottles, parcels, or other articles on the window sills, (v) place any equipment, furniture or other items of personal property on any exterior balcony, (vi) paint, affix or exhibit on the exterior of the Premises any sign, advertisement or notice (unless otherwise required by law or reasonable safety measures), (vii) place additional locks or bolts of any kind or nature upon any doors or windows in the Premises or (viii) make any changes to existing locks or the mechanism thereof. Interior signs on doors and the directory tablet shall be of a size, color and type reasonably acceptable to Landlord.

10.6. Tenant shall cause any office equipment or machinery to be installed in the Premises so as to reasonably prevent sounds or vibrations therefrom from extending into Common Areas, or other space in the Premises. Tenant shall not place any equipment weighing five hundred (500) pounds or greater in or upon the Premises without the prior written of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

10.7. Tenant shall not use or allow the Premises to be used for any immoral, unlawful or objectionable purpose, nor shall Tenant knowingly cause, maintain or permit any nuisance or waste in, on, or about any or all of the Premises.

10.8. Notwithstanding any other provision herein to the contrary, Tenant shall be responsible for any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and disbursements and costs of suit) (collectively, **"Claims"**) arising out of or in connection with the compliance of the Premises with the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with regulations promulgated pursuant thereto, **"ADA"**) and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with the ADA.

11. Brokers.

11.1. Tenant represents and warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease other than Tenant's Broker, as has been disclosed in writing to Landlord, and that Tenant knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease.

11.2. Tenant hereby indemnifies and shall defend, hold and save Landlord harmless from and against any and all Claims for any commissions or fees in connection with this Lease made by any broker or finder having worked, or claiming to have worked, on behalf Tenant, other than Tenant's Broker.

11.3. Tenant represents and warrants that no broker or agent has made any representation or warranty relied upon by Tenant in Tenant's decision to enter into this Lease.

11.4. Tenant acknowledges and agrees that the employment of brokers by Landlord is for the purpose of solicitation of offers of lease from prospective tenants and no authority is granted to any broker to furnish any representation (written or oral) or warranty from Landlord. Landlord in executing this Lease does so in reliance upon Tenant's representations and warranties contained within Sections 11.1 and 11.3 hereof.

12. Holding Over.

12.1. If, with Landlord's express written consent, Tenant holds possession of all or any part of the Premises after the expiration or earlier termination of the Term, Tenant shall become a tenant from month-to-month upon the Term Expiration Date or earlier termination of this Lease, and in such case Tenant shall continue to pay Basic Annual Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as Landlord may indicate, in Landlord's sole and absolute discretion, in such written consent, and all other provisions, representations, covenants and agreements contained herein (other than with respect to the Term and any extensions thereof, but specifically including, without limitation, the adjustment of Basic Annual Rent pursuant to Section 6 hereof) shall remain in full force and effect.

12.2. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, Tenant shall become a tenant at sufferance upon the terms of this Lease except that the monthly rental shall be equal to one hundred fifty percent (150%) of the Basic Annual Rent and Additional Rent in effect during the last thirty (30) days of the Term. In addition,

Tenant shall be responsible for all damages suffered by Landlord resulting from or occasioned by Tenant's holding over.

12.3. Acceptance by Landlord of Rent after the Term Expiration Date or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

12.4. The foregoing provisions of this Article 12 are in addition to and do not affect Landlord's right to re-entry or any other rights of Landlord hereunder or as otherwise provided by law.

13. Taxes on Tenant's Property.

13.1. Tenant shall pay, prior to delinquency, any and all taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises.

13.2. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Premises is increased by the inclusion therein of a value attributable to Tenant's personal property or trade fixtures, Landlord shall have the right, but not the obligation, to pay such taxes. The amount of any such payment by Landlord shall constitute Additional Rent due by Tenant to Landlord within ten (10) Business Days of written demand therefor.

14. Condition of Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of any or all of the Premises, the Premises, or with respect to the suitability of any of the foregoing for the conduct of Tenant's business. The Tenant is in possession of the Premises pursuant to the Sublease, and acknowledges and agrees that the Premises and Premises is in good, sanitary and satisfactory condition and repair.

15. **[Intentionally omitted]**

16. Utilities and Services.

16.1. Tenant shall pay for all water, gas, heat, light, power, telephone and other utilities supplied to the Premises during the Term, together with any and all fees, surcharges and taxes thereon. Tenant shall pay directly to the applicable utility or service provider prior to delinquency, for all utilities and services which may be furnished to Tenant or the Premises during the Term.

16.2. Landlord shall not be liable for, nor shall any eviction of Tenant result from, the failure to furnish any utility or service whether or not such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action, inability despite the exercise of reasonable diligence or by any other cause. Upon any such failure, Tenant shall not be entitled to any abatement or reduction of Rent, nor be relieved from the operation of any covenant or agreement of this Lease; provided, however, that if such failure is due to the gross negligence or willful misconduct of Landlord, and such interruption renders a substantial portion of the Premises untenantable for their intended purposes for more than five (5) continuous business days, then, as Tenant's sole and exclusive remedy for such failure, Tenant's obligation to pay monthly Rent shall abate for the period of time that the Premises remains substantially untenantable.

16.3. Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, use the Premises in any manner or maintain any device or devices in the Premises (including, without limitation, data processing machines) that will, individually or taken together with all other uses of and devises in the Premises, require ventilation, air exchange, heating, gas, steam, electricity or water beyond the existing capacity of the Premises.

16.4. Landlord reserves the right to stop service of the elevator, plumbing, heating, ventilation, air conditioning and electric systems, when necessary, by reason of accident or emergency or, upon not less than forty-eight (48) hours advance notice to Tenant, for repairs, alterations or improvements, in the reasonable judgment of Landlord desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed, and Landlord shall have no responsibility or liability for failure to supply elevator facilities, plumbing, ventilation, heating, air conditioning or electric service during any such period of interruption. If Landlord's gross negligence or willful misconduct interrupts any such elevator, plumbing, heating, ventilation, air conditioning or electrical service for more than five (5) continuous days after notice from Tenant to Landlord of such interruption of service, then, as Tenant's sole and exclusive remedy for such failure, Rent shall be abated until such service is restored.

17. Alterations; Fixtures; Other Personal Property.

17.1. Tenant shall not make any alterations, additions or improvements in or to the Premises (collectively, "**Alterations**") without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. In the event that Landlord approves any Alterations, Landlord may elect, at the time of such approval, to require Tenant to remove any or all of the Installations upon the expiration or earlier termination of this Lease and may impose such other covenants, conditions and obligations on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem reasonably necessary or appropriate in Landlord's reasonable discretion. Any request for approval shall be in writing, delivered not less than fourteen (14) days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord. Tenant shall pay to Landlord on demand an amount equal to Landlord's actual out-of-pocket costs and expenses incurred by Landlord in connection with any alterations, additions or improvements to the Premises to cover Landlord's costs and expenses for plan review, coordination, scheduling and supervision thereof. Tenant shall reimburse Landlord for any extra expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, delays caused by such work, or inadequate cleanup.

17.2. Other than the items, if any, listed on Exhibit "G" attached hereto and any trade fixtures, machinery, equipment and other personal property which may be removed without material damage to the Premises, which damage shall be repaired by Tenant during the Term (**"Tenant's Property"**), all Alterations, real property fixtures, built-in laboratory casework and cabinets and other similar additions and improvements built into the Premises so as to become an integral part of the Premises, such as fume hoods which penetrate the roof or plenum area, built-in cold rooms, built-in warm rooms, walk-in cold rooms, walk-in warm rooms, deionized water system, glass washing equipment, autoclaves, chillers, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch (collectively, **"Installations"**) shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, shall not be removed by Tenant at any time during the Term (unless replaced with substantially similar updated installations) and shall remain upon and be surrendered with the Premises as a part thereof following the expiration or earlier termination of the Term; provided, however, that if Landlord elected at the time it approved such Installation to cause Tenant to remove such Installation, Tenant shall remove such Installation upon the expiration or earlier termination of this Lease and restore any damage caused by or occasioned as a result of such removal. During any such restoration period, Tenant shall pay Rent to Landlord as provided herein as if said space were otherwise occupied by Tenant.

17.3. If Tenant shall fail to remove all of Tenant's Property and other effects from the Premises prior to expiration or earlier termination of this Lease, then Landlord may, at its option in its sole and absolute discretion, (a) remove the same in any manner that Landlord shall choose, and store Tenant's Property and other effects without liability to Tenant for loss thereof or damage thereto, and Tenant agrees to pay Landlord upon demand any and all expenses incident to such removal and storage or (b) without notice, sell Tenant's Property and other effects or any of them, at private sale and without legal process, for such price as Landlord may obtain, and apply the proceeds of such sale against any amounts due under this Lease from Tenant to

Landlord and against any and all expenses incident to the removal, storage and sale of Tenant's Property and other effects.

17.4. Notwithstanding anything in this Lease to the contrary, Landlord's consent shall not be required with respect to any cosmetic or decorative alterations costing less, in the aggregate, than Five Thousand Dollars ($5,000) during any six (6) month period, provided that such alteration (i) does not affect the Premises structure or the exterior of the Premises, (ii) does not adversely affect the proper functioning of any mechanical, utility, heating, ventilating, air conditioning, or electrical systems, or any other Premises system, (iii) does not violate the provisions of the certificate of occupancy for the Premises or the Premises, (iv) the work is done expeditiously and in a good and workmanlike manner using new materials of good quality, (v) the alterations comply with all applicable laws promulgated by Governmental Authorities, (vi) Tenant complies with any applicable insurance requirements contained in this Lease, and (vii) Tenant shall promptly pays all costs and expenses and discharges any liens arising in respect of the work.

18. Repairs and Maintenance.

18.1. Landlord, at its own cost, shall repair the structural portions of the Premises, including, without limitation, foundations, structural interior partitions, and exterior walls, unless such repairs are required in whole or in part because of any act, neglect, fault of or omissions of any duty by Tenant, its agents, servants, employees or invitees, in which case Tenant shall pay to Landlord the full cost of such repairs prior to and as a condition to Landlord's obligation to make such repairs.

18.2. Except for services of Landlord, if any, required by Section 18.1, Tenant shall, at its sole cost and expense, keep the Premises and every part thereof (including, without limitation, plumbing, fire sprinkler system (if any), heating, ventilating, air conditioning, elevator, electrical systems, exterior landscaping and, subject to Section 7.4 hereof, roofing and covering materials and parking areas) in good condition and repair, ordinary wear and tear excepted. Tenant shall, upon the expiration or earlier termination of this Lease, surrender the Premises to Landlord in at least as good as its condition when received, ordinary wear and tear excepted. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof.

18.3. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance which is an obligation of Landlord unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Tenant waives the rights that may be available to it under the laws of the State in which the Premises is located or under any similar law, statute or ordinance now or hereafter in effect to make repairs at Landlord's expense. Prior to entering the Premises to perform work and make repairs which are permitted or required pursuant to the terms of this Lease (except in the event of an emergency, in which event such right and access shall be unrestricted) Landlord shall give Tenant reasonable advance notice of the proposed entry or access. Landlord shall perform all work and make all repairs in a manner designed to reasonably minimize any material interference with Tenant's use of the Premises (although Landlord shall not thereby be required to incur overtime or other additional expense to do so unless Tenant requests Landlord do so and shall pay for such expense).

18.4. This Article 18 relates to repairs and maintenance arising in ordinary course of operation of the Premises and any related facilities, including minor acts of vandalism. In the event of fire, earthquake, flood, riot, major acts of vandalism, war, or similar cause of damage or destruction, this Article 18 shall not be applicable and the provisions of Article 22 shall apply and control.

19. Liens.

19.1. Without in any way affecting the limitations on Alterations pursuant to Section 17.1 hereof, Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Tenant, within ten (10) days after Tenant has

knowledge of the filing thereof, at the sole cost and expense of Tenant. Subject to the immediately preceding sentence, Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant.

19.2. Should Tenant fail to discharge any lien of the nature described in Section 19.1, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost thereof shall be immediately due from Tenant as Additional Rent.

19.3. In the event Tenant shall lease or finance the acquisition of office, laboratory or manufacturing equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, including equipment of a removable nature required for Tenant's cGMP Facility, Tenant warrants that any Uniform Commercial Code Financing Statement executed by Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Premises be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

20. Indemnification and Exculpation.

20.1. Tenant hereby indemnifies and agrees to defend, save and hold Landlord harmless from and against any and all Claims for injury or death to person or damage to property occurring within or about the Premises, arising directly or indirectly out of use or occupancy of the Premises or a breach or default by Tenant in the performance of any of its obligations hereunder, unless caused solely by the willful misconduct or gross negligence of the Landlord.

20.2. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records, product, research or other personal property of any kind or description kept within the Premises). Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records, product, research or other personal property of any kind or description).

20.3. Landlord shall not be liable for any damages arising from any act, omission or neglect of any person, provided however, that, subject to Section 41.9 hereof, Landlord shall indemnify Tenant from and against any and all Claims for injury or death to person or damage to property occurring within or

about the Premises, arising directly or indirectly out of the gross negligence or willful misconduct of Landlord.

20.4. Security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts. Tenant (a) acknowledges and agrees that Landlord shall not be liable for injuries or losses caused by criminal acts of third parties and (b) assumes the risk that any security device or service may malfunction or otherwise be circumvented by a criminal. Tenant shall at Tenant's cost obtain insurance coverage to the extent Tenant desires protection against such criminal acts.

21. Insurance; Waiver of Subrogation.

21.1. Landlord shall carry insurance upon the Premises, in an amount equal to full replacement cost (exclusive of the costs of excavation, foundations, and footings, and without reference to depreciation taken by Landlord upon its books or tax returns) or, if greater, the amount of such insurance Landlord's mortgage lender requires Landlord to maintain, providing protection against any peril generally included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief. Subject to availability thereof, Landlord shall further insure, as it deems necessary or appropriate, against flood, environmental hazard and earthquake, loss or failure of building equipment, rental loss during the period of repair or rebuild, workmen's compensation insurance and fidelity

bonds for employees employed to perform services. Landlord shall, on fifteen (15) business days prior written notice from Tenant, obtain insurance as to any improvements installed by Tenant or which are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such improvements are made a part of the Premises, Landlord shall use its best efforts to provide insurance certificates evidencing such insurance to Tenant not more than 30 days after each renewal of any such insurance.

21.2. Landlord shall further carry public liability insurance with a single loss limit of not less than Two Million Dollars ($2,000,000.00) for death or bodily injury, or property damage with respect to the Premises.

21.3. All insurance required or permitted to be maintained by Landlord hereunder shall constitute Reimbursable Operating Expenses.

21.4. Tenant, at its sole cost and expense, shall procure and continue in effect throughout the Term (and during any period of occupancy by Tenant after the expiration or earlier termination of this Lease) comprehensive public liability insurance with limits of not less than Two Million Dollars ($2,000,000.00) per occurrence for death or bodily injury and not less than One Million Dollars ($1,000,000.00) for property damage with respect to the Premises.

21.5. The aforesaid insurance required of Tenant shall name Landlord, its officers, employees and agents, as an additional insured. Said insurance shall be with companies having a rating of not less than policyholder rating of A and financial category rating of at least Class XII in "Best's Insurance Guide." Tenant shall obtain for Landlord from the insurance companies or cause the insurance companies to furnish, certificates of coverage to Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Landlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Landlord may carry. Tenant's policy may be a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall, at least twenty (20) days prior to the expiration of such policies, furnish Landlord with renewals or binders. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and at its cost to be paid as Additional Rent.

21.6. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, any and all fixtures, goods, inventory, merchandise, equipment, leasehold improvements (subject to Section 22 hereof), and personal property (including, without limitation, all books and records) and Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom relative to such damage all as more particularly heretofore set forth within this Lease. Tenant, at its sole cost and expense, shall carry such insurance as Tenant desires with respect to personal property of Tenant or interruption of Tenant's business.

21.7. In each instance where insurance is to name Landlord as additional insured, Tenant shall upon written request of Landlord also designate and furnish certificates so evidencing Landlord as additional insured to (i) any lender of Landlord holding a security interest in the Premises or real property upon which the Premises is situated, and/or (ii) the landlord under any lease wherein Landlord is tenant of the real property whereupon the Premises is located if the interest of Landlord is or shall become that of a tenant under a ground lease rather than that of a fee owner, and/or (iii) any management company retained by Landlord to manage the Premises.

21.8. For the Term of this Lease, Tenant and Landlord each hereby waives any and all rights of recovery against the other or against the officers, directors, employees, agents, and representatives of the other, on account of loss or damage occasioned to Tenant or Landlord, as applicable, or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of such loss or damage. Landlord and Tenant upon obtaining the policies of insurance required or permitted under this Lease shall give

notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease. If the foregoing waiver of subrogation shall contravene any law with respect to exculpatory agreements, the liability of Landlord or tenant, as applicable, shall be deemed not released but shall be secondary to the other's insurer.

21.9. Landlord may require insurance policy limits to be raised to conform with requirements of Landlord's lender and/or to bring coverage limits to levels then being required of new tenants within Landlord's other projects.

22. Damage or Destruction.

22.1. In the event of a partial destruction of the Premises by fire or other perils covered by extended coverage insurance, not exceeding fifty percent (50%) of the full insurable value of the Premises and if the damage thereto is such that the Premises may be repaired, reconstructed or restored within a period of eight (8) months from the date of the happening of such casualty and Landlord will receive insurance proceeds (or would have received if Landlord carried the insurance required to be carried pursuant to Article 21 hereof) sufficient to cover the cost of such repairs (except for any deductible amount provided by Landlord's policy (which shall be no greater than $15,000), which deductible amount if paid by Landlord shall be includable in Additional Rent), Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect.

22.2. In the event of any damage to or destruction of the Premises, other than as provided in Section 22.1, Landlord may elect, in its sole and absolute discretion, to repair, reconstruct and restore the Premises, in which case this Lease shall continue in full force and effect or (b) not to repair, reconstruct and restore the Premises, in which case this Lease shall terminate as of the date that is seventy-five (75) days after the date of damage or destruction; provided, however, that notwithstanding Landlord's election, Tenant may elect to terminate this Lease by written notice to Landlord within ten (10) business days of receipt of Landlord's notice of election; and provided further, if there are, at the time of any such destruction of the Premises any then unexercised Extension Rights hereunder and if Tenant elects to extend the term hereof for a term that extends for at least five years or more beyond the date or projected date of any restoration of the Premises, Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect, as so extended.

22.3. Landlord shall give written notice to Tenant of its election pursuant to Section 22.2 not later than sixty (60) days following the date of damage or destruction.

22.4. In the event of damage or destruction as herein described, the rental provided to be paid under this Lease shall be abated proportionately based on the extent to which Tenant's use of the Premises is impaired during the period of such repair, reconstruction or restoration, unless Landlord provides Tenant with other space during the period of repair that is suitable (in Tenant's reasonable discretion) for the temporary conduct of Tenant's business.

22.5. Notwithstanding anything to the contrary contained in this Article, if Landlord is delayed or prevented from commencing or completing the repair or restoration of damage to or destruction of the Premises by reason of acts of God or war, governmental restrictions, inability to procure the necessary labor or materials, strikes, or other events beyond the control of Landlord, the time for Landlord to commence or complete repairs shall be extended until such events cease to delay or prevent such repair or restoration; provided, however, that if repairs or restoration required to provide Tenant use of the Premises is not substantially complete as of the end of eight (8) months from the date of damage or destruction, then Landlord may, in its sole and absolute discretion, elect not to proceed with such repair and restoration, in which event Landlord shall be relieved of its obligations to make such repairs or restoration and this Lease shall terminate as of the date that is seventy-five (75) days after such damage or destruction.

22.6. If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to make repairs or restoration only of those portions of the Premises which were covered by Landlord's insurance and then only to the extent of such insurance proceeds; the repair and restoration of items not covered by Landlord's insurance shall be the obligation of Tenant. In the event Tenant elected to upgrade certain improvements from the standard normally provided by Landlord, Landlord shall, upon the need for replacement due to an insured loss, provide only the standard Landlord improvements unless Tenant shall elect to again upgrade and pay any additional cost of such upgrades.

22.7. Notwithstanding anything to the contrary contained in this Section 22, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises to the extent that insurance proceeds are not available therefor, or when the damage resulting from any casualty covered under this Article occurs during the last twenty-four (24) months of the Term and is reasonably estimated by Landlord to cost Two Hundred Fifty Thousand Dollars ($250,000) or more to repair, unless if there are, at the time of any such destruction of the Premises any then unexercised Extension Rights hereunder and Tenant elects to extend the term hereof as described in the Right to Extend Addendum attached hereto, Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect, as so extended.

22.8. Upon termination of this Lease under any of the provisions of this Section 22, the parties shall be released from all of their obligations arising under this Lease from the date Tenant surrenders possession of the Premises to the Landlord, except for obligations with respect to facts, events or circumstances which have theretofore occurred and obligations arising under provisions hereof that expressly survive the termination of this Lease.

23. Eminent Domain.

23.1. In the event the whole of the Premises, or such part thereof as shall substantially interfere with the Tenant's use and occupancy thereof, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Tenant or Landlord may terminate this Lease effective as of the date possession is required to be surrendered to said authority.

23.2. In the event of a partial taking of the Premises or of drives, walkways, and parking areas serving the Premises for any public or quasi-public purpose by any lawful power or authority by exercise of right of appropriation, condemnation, or eminent domain, or sold to prevent such taking, then without regard as to whether any portion of the Premises occupied by Tenant was so taken, Landlord may elect to terminate this Lease as of such taking if such taking is, in the reasonable opinion of Landlord, of a material nature such as to make it uneconomical to continue use of the unappropriated portion for purposes of office rentals or laboratory space.

23.3. Tenant shall be entitled to any award which is specifically awarded as compensation for the taking of Tenant's personal property that was installed at Tenant's expense and for costs of moving Tenant to a new location. Except as before set forth, any and all awards for any taking of the nature described in this Section 23 shall belong to Landlord.

23.4. If, following any taking of the nature described in this Section 23, this Lease continues in effect, the Landlord shall promptly proceed to restore the Premises to substantially their same condition prior to such partial taking. To the extent such restoration is feasible, as reasonably determined by Landlord, the Rent shall be abated proportionately based upon the extent, if any, to which Tenant's use of the Premises has decreased on the basis of the percentage of the rental value of the Premises after such taking and the rental value of the Premises prior to such taking.

24. Defaults and Remedies.

24.1. Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within ten (10) days after the date such payment is due, Tenant shall pay to Landlord an additional sum of six percent (6%) of the overdue Rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest from the 5th day after date due until paid at the lesser of (i) twelve percent (12%) per annum or (ii) the maximum rate permitted by law.

24.2. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided.

24.3. If Tenant fails to pay any sum of money required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, Landlord may, without waiving or releasing Tenant from any obligations of Tenant, but shall not be obligated to, make such payment or perform such act. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to twelve percent (12%) per annum or the highest rate permitted by law, whichever is less, shall be payable to Landlord on demand as Additional Rent.

24.4. The occurrence of any one or more of the following events shall constitute a "Default" hereunder by Tenant:

24.4.1 The abandonment or vacation of the Premises by Tenant;

24.4.2 The failure by Tenant to make any payment of Rent as and when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay Rent not more than once in any 12 month period and Tenant agrees that such notice shall be in lieu of and not in addition to any notice required by law;

24.4.3 The failure by Tenant to observe or perform any obligation or covenant contained herein (other than described in Section 24.4.1 and 24.4.2) to be performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant. Such notice shall be in lieu of, and not in addition to, any notice required under any applicable law, statute or ordinance; provided that if the nature of Tenant's default is such that it reasonably requires more than thirty (30) days to cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion, provided, however, that such cure is completed no later than ninety (90) days from the date of written notice; provided, further, however, that if any such cure cannot be completed within such ninety (90) day period solely by reason of the need for any required governmental permit which is not received within such ninety (90) day period, and provided (i) Tenant uses diligence in applying for and pursuing such permits, and (ii) Tenant's operations in the Premises are not materially adversely affected by its failure to effect cure within such ninety (90) day period, Tenant may have up to an additional ninety (90) days to obtain any such permit and to effect such cure;

24.4.4 Tenant makes an assignment for the benefit of creditors;

24.4.5 A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Tenant's assets;

24.4.6 Tenant files a voluntary petition under the Bankruptcy Code (or any similar law) or an order for relief is entered against Tenant pursuant to a voluntary or involuntary proceeding commenced under any chapter of the Bankruptcy Code;

24.4.7 Any involuntary petition is filed against the Tenant under any chapter of the Bankruptcy Code and is not dismissed within ninety (90) days; or

24.4.8 Tenant's interest in this Lease is attached, executed upon, or otherwise judicially seized and such action is not released within ninety (90) days of the action.

Notices given under this Section 24.4 shall specify the alleged default and shall demand that Tenant perform the provisions of this Lease or pay the Rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice.

24.5. In the event of a Default by Tenant, and at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have, Landlord shall be entitled to terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In the event that Landlord shall elect to so terminate this Lease, then Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including:

24.5.1 The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

24.5.2 The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds that portion of such rental loss which Tenant proves could have been reasonably avoided; plus

24.5.3 The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

24.5.4 Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligation under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of restoring the Premises to the condition required under the terms of this Lease; plus

24.5.5 At the Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Sections 24.5.1 and 24.5.2 above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 24.3. As used in Section 24.5.3 above, the "worth at the time of the award" shall be computed by taking the present value of such amount, by using the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus six (6) percentage points.

24.6. If Landlord does not elect to terminate this Lease as provided in this Section, then Landlord may, from time to time, recover all Rent as it becomes due under this Lease. At any time thereafter, Landlord may elect to terminate this Lease and to recover damage to which Landlord is entitled.

24.7. In the event Landlord elects to terminate this Lease and relet the Premises, it may execute any new lease in its own name. Tenant hereunder shall have no right or authority whatsoever to collect any Rent from such tenant. The proceeds of any such reletting shall be applied as follows:

First, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, including, but not limited to, storage charges or brokerage commissions owing from Tenant to Landlord as the result of such reletting;

Second, to the payment of the costs and expenses of reletting the Premises, including alterations and repairs which Landlord deems reasonably necessary and advisable and reasonable attorneys' fees, charges and disbursements incurred by Landlord in connection with the retaking of the Premises and such reletting;

Third, to the payment of Rent and other charges due and unpaid hereunder; and

Fourth, to the payment of future Rent and other damages payable by Tenant under this Lease.

24.8. All rights, options, and remedies of Landlord contained in this Lease shall be construed and held to be nonexclusive and cumulative. Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any Rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

24.9. Termination of this Lease or Tenant's right to possession by Landlord shall not relieve Tenant from any liability to Landlord which has theretofore accrued or shall arise based upon events which occurred prior to the last to occur of (i) the date of Termination or (ii) the date possession of Premises is surrendered.

24.10. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time after written notice by Tenant specifying wherein Landlord has failed to perform such obligation.

24.11. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Premises and to any landlord of any lease of land on which the Premises is located, in either case whose name and address shall have been furnished to Tenant, and Tenant shall offer such beneficiary, mortgagee and/or landlord a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or a judicial action if such should prove necessary to effect a cure, provided the Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. If, after the lapse of any such notice and cure period, no such cure has been effected, Tenant may cure such Landlord defaults and shall be entitled to interest on the reasonable amounts expended on such cure from the date incurred until paid.

25. Assignment or Subletting.

25.1. Except as hereinafter provided, Tenant shall not, either voluntarily or by operation of law, directly or indirectly, sell, hypothecate, assign, pledge, encumber or otherwise transfer this Lease, or sublet the Premises or any part thereof, or permit or suffer the Premises or any part thereof to be used or occupied as

work space, storage space, mailing privileges, concession or otherwise by anyone other than Tenant or Tenant's employees, without the prior written consent of Landlord in each instance, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, so long as Tenant is not in default hereunder, Landlord's consent shall not be required in connection with an assignment of this Lease or sublet of the Premises to any entity controlled by, under common control with or controlling Tenant, provided that Tenant gives Landlord prior written notice of such transaction and such proposed transaction otherwise complies with or satisfies the requirements and conditions of Section 25.5 hereof (an **"Affiliate Transfer"**).

In addition, Tenant shall have the right to assign this Lease, upon written notice to Landlord but without obtaining Landlord's prior written consent, to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of all or substantially all of the assets or the ownership interests of the Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring the Lease, and (ii) the net worth (as determined in accordance with GAAP) of the assignee or sublessee, as applicable, is not less than the net worth (as determined in accordance with GAAP) of Tenant as of the Effective Date, and (iii) such assignee shall agree in writing to assume all of the terms, covenants and conditions of this Lease arising after the effective date of the assignment (a **"Permitted Assignment"**).

25.2. If Tenant is a corporation, the shares of which are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby twenty-five percent (25%) or more of the issued and outstanding shares of such corporation are, or the voting control is, transferred (but excepting transfers upon the death of individual shareholders or transfers between existing shareholders) from a person or persons or entity or entities which were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares of the corporation at time of execution of this Lease shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in Section 25.1 above.

25.3. In the event Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises other than pursuant to a Permitted Assignment, then at least thirty (30) days, but not more than ninety (90) days, prior to the date when Tenant desires the assignment or sublease to be effective (the **"Assignment Date"**), Tenant shall give Landlord a notice (the **"Assignment Notice"**) containing information (including references) concerning the character of the proposed assignee or sublessee, the Assignment Date, any ownership or commercial relationship between Tenant and the proposed assignee or sublessee, and the consideration and all other material terms and conditions of the proposed assignment or sublease along with such other information as Landlord may reasonably require, all in such detail as Landlord shall reasonably require. Tenant shall also tender to Landlord, reasonable third party attorneys fees and other third party costs and expenses incurred by Landlord in reviewing Tenants request for such assignment.

25.4. Landlord in making its determination as to whether consent should be given to a proposed assignment or sublease, may request such information as it deems necessary or appropriate including, without limitation, information relating to the financial strength of the proposed assignee or sublessee (notwithstanding that the assignor will remain liable for Tenant's performance), any change in use of the Premises which such proposes assignee contemplates.

25.5. As conditions precedent to consideration of a requested transfer of rights or subletting of the Demises Premises, Landlord may require any or all of the following:

25.5.1 Notwithstanding any assignment or subletting, Tenant shall remain fully liable under this Lease during the unexpired Term;

25.5.2 Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord that the value of Landlord's interest under this Lease will not thereby be diminished or reduced. Such evidence shall

include, but need not be limited to, evidence respecting the relevant business experience and financial responsibility and status of the third party concerned;

25.5.3 Tenant shall reimburse Landlord for Landlord's actual third party costs and expenses, including, without limitation, reasonable attorneys' fees, charges and disbursements incurred in connection with the review, processing and documentation of such request;

25.5.4 If Tenant's assignment of this Lease or subletting of more than fifty percent (50%) of the Premises (other than a Permitted Assignment or an Affiliate Transfer) provides for the receipt by, on behalf or on account of Tenant of any consideration of any kind whatsoever (including, but not by way of limitation, a premium rental for a sublease or lump sum payment for an assignment) in excess of the rental and other charges due Landlord under this Lease and Tenant's reasonable leasing costs (consisting of new tenant improvements, leasing commissions, architectural fees, legal fees and other costs) in procuring such subtenant or assignee, Tenant shall pay one-half ($^1/_2$) of said excess to Landlord. If said consideration consists of cash paid to Tenant, said payment to Landlord shall be made upon receipt by Tenant of said cash payment;

25.5.5 Written agreement from any third party concerned that in the event Landlord gives such third party notice that Tenant is in default under this Lease, such third party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability on Landlord except to credit such payment against those due under the Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, that in no event shall Landlord or its successors or assigns be obligated to accept such attornment;

25.5.6 Tenant shall not then be in Default hereunder in any respect;

25.5.7 Such third party's proposed use of the Premises shall be a Permitted Use;

25.5.8 Landlord shall not be bound by any provision of any agreement pertaining to Tenant's transfer of rights or subletting of the Premises;

25.5.9 Any agreement pertaining to Tenant's transfer of this Lease or subletting of any portion of the Premises and Landlord's approval thereof (other than a Permitted Assignment) shall be in a form acceptable to Landlord in Landlord's reasonable discretion, and any such agreement shall not be modified or amended without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;

25.5.10 Tenant shall deliver to Landlord one original executed copy of any and all written instruments evidencing or relating to Tenant's transfer of rights or subletting of the Premises; and

25.5.11 A list of Hazardous Materials, certified by the proposed sublessee to be true and correct, which the proposed sublessee intends to use or store in the Premises. Additionally, Tenant shall deliver to Landlord, on or before the date any proposed sublessee takes occupancy of the Premises, all of the items relating to Hazardous Materials of such proposed sublessee.

25.6. Any sale, assignment, hypothecation or transfer of this Lease or subletting of the Premises that is not in compliance with the provisions of this Section 25 shall be void and shall constitute a Default hereunder permitting Landlord the right to exercise any and all of its remedies hereunder, including, without limitation, the right to terminate this Lease.

25.7. The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignees of this Lease or sublessee of the Premises from obtaining the consent of Landlord to any further assignment or subletting. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance

of any other term, covenant, or condition thereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting, assignment or other transfer of the Premises.

25.8. Notwithstanding any subletting or assignment, Tenant and any assignee or sublessee of Tenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due hereunder, and for the full performance of all other terms, conditions, and covenants to be kept and performed by Tenant.

25.9. Upon delivery to Landlord of an Assignment Notice which, together with all prior assignments, results in Tenant or any successor pursuant to a Permitted Assignment occupying less than fifty percent (50%) of the Premises, Landlord shall have the option, exercisable by giving notice to Tenant at any time within ten (10) days after Landlord's receipt of such Assignment Notice, to terminate this Lease as of the date specified in the Assignment Notice as the Assignment Date. No failure of Landlord to exercise any such option to terminate this Lease shall be deemed to be Landlord's consent to the proposed assignment, sublease or other transfer. If Landlord exercises such right to terminate the Lease as described above, Tenant shall have the right, within ten business days of Landlord's election, to withdraw such Assignment Notice, whereupon the Lease shall remain in full force and effect.

25.10. If Tenant shall sublet the Premises or any part, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenants obligations under this Lease; except that, subject to the provisions of Section 25.5.4 hereof, Tenant shall have the right to collect such rent until the occurrence of a Default.

26. Attorneys' Fees and Costs.

26.1. Tenant shall be responsible for (i) all of Tenant's legal and related costs and fees in connection with this Lease, and (ii) all of Landlord's legal and related costs and fees if Landlord is required to consult an attorney regarding the enforcement of this Lease.

26.2. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the non-prevailing party reasonable attorneys' fees, charges and disbursements and costs of suit.

27. Bankruptcy. In the event a debtor, trustee, or debtor in possession under the Bankruptcy Code, or other person with similar rights, duties and powers under any other law, proposes to cure any Default under this Lease or to assume or assign this Lease, and is obliged to provide adequate assurance to Landlord that (i) a Default will be cured, (ii) Landlord will be compensated for its damages arising from any breach of this Lease, or (iii) future performance under this Lease will occur, then adequate assurance shall include any or all of the following, as designated by Landlord:

27.1. Those acts specified in the Bankruptcy Code or other law as included within the meaning of adequate assurance, even if this Lease does not concern a shopping center or other facility described in such laws;

27.2. A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;

27.3. A cash deposit in an amount at least equal to the Security Deposit as referenced in 2.1.8 originally required at time of execution of this Lease.

27.4. The assumption or assignment of all of Tenant's interest and obligations under this Lease.

28. Estoppel Certificate. Within ten (10) days after written request from Landlord, Tenant shall execute, acknowledge and deliver a statement in writing substantially in the form attached to this Lease as Exhibit "H" with the blanks filled in, and on any other form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advanced, if any, (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed and (iii) setting forth such further information with respect to this Lease or the Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises is a part. Tenant's failure to deliver such statement within such time shall, at the option of Landlord, constitute a Default under this Lease, and, in any event, shall be conclusive upon Tenant that the Lease is in full force and effect and without modification or default except as may be represented by Landlord in any certificate prepared by Landlord. Upon request of Tenant, Landlord will similarly execute an estoppel certificate: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be reasonably requested thereon.

29. Definition of Landlord; Limitation of Landlord's Liability.

29.1. The term **"Landlord"** as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only Landlord or the successor-in-interest of Landlord under this Lease at the time in question. In the event of any transfer, assignment or the conveyance of Landlord's fee title or leasehold interest, the landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) automatically shall be freed and relieved, from and after the date of such transfer, assignment or conveyance, of all liability for the performance of any covenants or obligations contained in this Lease thereafter to be performed by Landlord and, without further agreement, the transferee of such title or leasehold shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder during its ownership or ground lease of the Premises. Landlord may transfer its interest in the Premises or this Lease without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on the part of Landlord or the then grantor of any of the terms or conditions of this Lease.

29.2. If Landlord is in default of this Lease, and as a consequence, Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title and interest of Landlord in the Premises, and out of rent or other income from such real property receivable by Landlord or out of the consideration received by Landlord from the sale, financing,

refinancing, or other disposition of all or any part of Landlord's right, title, and interest in the Premises.

29.3. Landlord shall not be personally liable for any deficiency. If Landlord is a partnership, limited liability company or joint venture, the members of such limited liability company, the partners of such partnership or the venturers in such joint venture, as applicable, shall not be personally liable and no member, partner or joint venturer of Landlord shall be sued or named as a party in any suit or action or service of process be made against any partner, member or joint venturer of Landlord except as may be necessary to secure jurisdiction of the partnership, limited liability company or joint venture. If Landlord is a corporation, the shareholders, directors, officers, employees, and/or agents of such corporation shall not be personally liable and no shareholder, director, officer, employee or agent of Landlord shall be sued or named as a party in any suit or action or service of process made against any shareholder, director, officer, employee or agent

of Landlord. No partner, member, shareholder, director, employee, or agent of Landlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any partner, member, shareholder, director, employee or agent of Landlord.

29.4. Each of the covenants and agreements of this Article 29 shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by statute or by common law and shall survive the termination of this Lease.

30. Premises Control by Landlord.

30.1. Landlord reserves full control over the Premises to the extent not inconsistent with Tenant's enjoyment of the Premises. This reservation includes, without limitation, the right of Landlord to expand and/or subdivide the Premises, grant easements and licenses to others, maintain or establish ownership of the Premises separate from fee title to the land on which the Premises is located and combine the Premises with any other project in the area of the Premises and owned by Landlord or any of its affiliates, so long as the same do not increase Tenant's obligations or materially increase Tenant's entitlements under this Lease.

30.2. Tenant shall, at Landlord's request, promptly join with Landlord in execution of such documents as may be reasonably appropriate to implement any such action, provided that Tenant need not execute any which is of nature wherein liability is created in Tenant or, if by reason of the terms of such document, Tenant will be deprived of the quiet enjoyment and use of the Premises as granted by this Lease.

30.3. Landlord and its agents and representatives may, at any and all reasonable times during non-business hours (or during business hours if Tenant so requests), and upon reasonable advance notice (provided that no time restrictions shall apply or advance notice need be given if an emergency necessitates an immediate entry), enter the Premises accompanied by a representative of Tenant (except in an emergency) to (a) inspect the same and to determine whether Tenant is in compliance with its obligations hereunder, (b) supply any service Landlord is required to provide hereunder, (c) show the Premises at any time during the Term, to prospective lenders, insurers, investors, purchasers or, during the last year of the Term to tenants, (d) post notices of nonresponsibility, (e) access the telephone equipment, electrical substation and fire risers, and (f) alter, improve or repair any portion of the Premises. In connection with any such alteration, improvement or repair, Landlord may erect in the Premises scaffolding and other structures reasonably required for the work to be performed. In no event shall Tenant's Rent abate as a result of any such entry or work; provided, however, that all such work shall be done in such a manner as to cause as little interference to Tenant as reasonably possible. Tenant shall ensure that Landlord at all times possesses keys with which to unlock all of the doors in the Premises. If an emergency necessitates immediate access to the Premises, Landlord may use whatever force is necessary to enter the Premises and any such entry to the Premises shall not constitute a forcible or unlawful entry to the Premises, an unlawful detainer of the Premises, or an eviction of Tenant from the Premises, or any portion thereof.

31. Quiet Enjoyment. So long as Tenant is not in default, Landlord covenants that neither Landlord nor anyone acting through or under Landlord will disturb Tenant's occupancy of the Premises except as permitted by the provisions of this Lease.

32. Quitclaim Deed. Tenant shall execute and deliver to Landlord on the expiration or termination of this Lease, immediately on Landlord's request a quitclaim deed to the Premises in recordable form, or such other documentation reasonably requested by Landlord evidencing termination of this Lease.

33. Rules and Regulations. Tenant shall faithfully observe and comply with the Rules and Regulations. Landlord shall not be responsible to Tenant for the violation or non-performance by any other tenant or any agent, employee or invitee thereof of any of said Rules and Regulations.

34. Subordination and Attornment.

34.1. This Lease shall be subject and subordinate to the lien of any mortgage, deed of trust, or lease under which Landlord is mortgagor, trustor or tenant now or hereafter in force against the Premises (each, a **"Master Lien"**), and to all advances made or hereafter to be made upon the security of any Master Lien without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination, provided that the holder of a Master Lien delivers a Subordination, Nondisturbance and Attornment Agreement in the form attached as Exhibit H.

34.2. Notwithstanding the foregoing, Tenant shall execute and deliver upon demand such further instrument or instruments evidencing such subordination of this Lease to the lien of any Master Lien as may be required by Landlord. However, if any mortgagee, beneficiary or lessor under a Master Lien so elects, this Lease shall be deemed prior to such Master Lien regardless of date and Tenant will execute a statement in writing to such effect at Landlord's request. If Tenant fails to execute any document required from Tenant under this Section 35.2 within ten (10) days after written request therefor, Tenant hereby constitutes and appoints Landlord its special attorney-in-fact to execute and deliver any such document or documents in the name of Tenant. Such power is coupled with an interest and is irrevocable.

34.3. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any Master Lien, Tenant shall at the election of the purchaser at such foreclosure or sale attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

35. Surrender.

35.1. No surrender of possession of any part of the Premises shall release Tenant from any of its obligations hereunder unless accepted by Landlord.

35.2. The voluntary or other surrender of this Lease by Tenant shall not work a merger, unless Landlord consents to such merger and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies.

35.3. The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Premises, or a mutual cancellation, thereof, or of Landlord's interest therein, shall not work a merger and shall, at the option of the successor of Landlord's interest in the Premises, operate as an assignment of this Lease.

35.4. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean and free of debris; with all of Tenant's Property and effects removed therefrom; with all Installations required by Landlord to be removed from the Premises actually removed and all damage as a result of or caused by such removal repaired; and with all licenses, permits and similar items which restrict or affect the used of the Premises released and fully terminated.

36. Waiver and Modification. No provision of this Lease may be modified, amended or added to except by an agreement in writing. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

37. Waiver of Jury Trial and Counterclaims. THE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND OR ANY CLAIM OF INJURY OR DAMAGE.

38. [Intentionally Omitted]

39. Hazardous Materials.

39.1. Prohibition/Compliance. Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept or used in or about the Premises in violation of applicable law. If Tenant breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Materials brought on to the Premises by any person other than Landlord, its employees, agents or contractors, results in contamination of the Premises or any adjacent property or if contamination of the Premises or any adjacent property by Hazardous Materials otherwise occurs during the term of this Lease or any extension or renewal hereof or holding over hereunder, Tenant hereby indemnifies and shall defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space in the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the air, soil or ground water above on or under the Premises caused by any person other than Landlord, its employees, agents or contractors. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises or any adjacent property, caused or permitted by Tenant results in any contamination of the Premises or any adjacent property, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises or any adjacent property, to the condition existing prior to the time of such contamination, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. Subject to any environmental conditions which existed on the Premises on or prior to May 1, 1995, (including any materials, underground tanks or other as yet undiscovered Hazardous Materials located on the Premises as of such date), Tenant accepts the Premises and agrees for all purposes of this Lease that Tenant is solely responsible for any Hazardous Materials which may have been introduced to the Premises on or after such date. Notwithstanding anything in this Section 39.1 to the contrary, Tenant shall not be liable for any Hazardous Materials which migrate onto or under the Premises from adjacent property through no act or omission of Tenant.

39.2. Business. Landlord acknowledges that it is not the intent of this Article to prohibit Tenant from operating its business as a Permitted Use in accordance with Section 10 of this Lease. Tenant may operate its business according to the custom of the industry so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all applicable governmental requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord prior to the Term Commencement Date a list identifying each type of Hazardous Materials to be present on the Premises and setting forth any and all governmental approvals or permits required in connection with the presence of such Hazardous Materials on the Premises (**"Hazardous Materials List"**). Tenant shall deliver to Landlord an updated Hazardous Materials List at least once a year and shall also deliver an updated list before any new Hazardous Materials is brought onto the Premises. Tenant shall deliver to Landlord true and correct copies of the following documents (the **"Documents"**) relating to the handling, storage, disposal and emission of Hazardous Materials prior to the Term Commencement Date, or if unavailable at that time, concurrent with the receipt from or submission to a governmental agency: permits; approvals; reports and correspondence; storage and management plans, notice of violations of any laws; plans relating to the installation of any storage tanks to be installed in or under Premises (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks installed in, on or under the Premises for the closure of any such tanks. Tenant is not required, however, to provide Landlord with any portion(s) of the Documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous

activities, It is not the intent of this Section to provide Landlord with information which could be detrimental to Tenant's business should such information become possessed by Tenant's competitors.

39.3. Termination of Lease. Notwithstanding the provisions of Section 39.1 above, if (i) Tenant has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Materials contaminating a property if the contamination resulted from such party's action or use of the property in question, or (ii) Tenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Materials, Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion (with respect to any such matter involving Tenant).

39.4. Testing. At any time, and from time to time, but no more frequently than annually and on 48 hours prior written notice to Tenant so long as no Default has occurred and is continuing, prior to the expiration or earlier termination of the Term, Landlord shall have the right to conduct appropriate tests of the Premises to demonstrate that contamination has occurred as a result of Tenant's use of the Premises. Tenant shall be solely responsible for and shall defend, indemnify and hold the Landlord, its agents and contractors harmless from and against any and all Claims arising out of or in connection with any removal, clean up, restoration and materials required hereunder to return the Premises and any other property of whatever nature to their condition existing prior to the time of any such contamination. Tenant shall pay for the cost of the tests of the Premises if any Hazardous materials are found not to be stored, kept or used in compliance with all laws applicable to Hazardous Materials.

39.5. Underground Tanks. If underground or other storage tanks storing Hazardous Materials are (i) located on the Premises as of the date hereof, or (ii) hereafter placed on the Premises by any party (other than Landlord), Tenant shall monitor the storage tanks, maintain appropriate records, implement reporting procedures, properly close any underground storage tanks, and take or cause to be taken all other steps necessary or required under any applicable law.

39.6. Tenant's Obligations. Tenant's obligations under this Article 39 shall survive the expiration or earlier termination of the Lease. During any period of time required by Tenant or Landlord after the termination of this Lease to complete the removal from the Premises of any such Hazardous Materials and the release and termination of any licenses or permits restricting the use of the Premises, Tenant shall continue to pay the full Rent in accordance with this Lease, which Rent shall be prorated daily.

39.7. Definition of "Hazardous Materials." As used herein, the term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State in which the Premises are located, or the United States government and includes, without limitation, any material or substance which is (i) defined as a "hazardous substance," "hazardous waste, " "extremely hazardous waste" or "restricted hazardous waste" under any applicable law, (ii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conversation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq. (42 U.S.C. Section 9601).

40. cGMP Facility. Landlord hereby approves the construction by Tenant, as an Alteration to be undertaken by Tenant at Tenant's sole cost and expense, of a cGMP Facility as described on Exhibit "C" attached hereto and incorporated herein by this reference, at Tenant's option. Such construction of the cGMP Facility, if any, shall be undertaken in compliance with all of the terms and provisions of this Lease, including, without limitation, Section 17 hereof. Tenant may construct a door through the south exterior wall of the Premises, subject to Landlord's approval of the plans therefor, such approval not to be unreasonably withheld or delayed. Such construction work shall be subject to the terms and conditions of this Lease, including without limitation Sections 17, 20, and 21 herein.

41. Miscellaneous.

41.1. Terms and Headings. Where applicable in this Lease, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

41.2. Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

41.3. Time. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

41.4. Covenants and Conditions. Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

41.5. Consents by Landlord. Except as otherwise expressly provided herein, any consent, approval, election or determination of Landlord shall be made by Landlord in its sole and absolute discretion.

41.6. Entire Agreement. The terms of this Lease are intended by the parties as a final expression of their agreement with respect to the terms as are included herein, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Basic Lease Provisions, General Provisions, Exhibits and Addenda all constitute a single document and are incorporated herein.

41.7. Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

41.8. Recording. Landlord may, but shall not be obligated to, record a short form memorandum hereof without the consent of Tenant. Neither party shall record this Lease. Tenant shall be responsible for the cost of recording any Memorandum of Lease, including any transfer or other taxes incurred in connection with said recordation.

41.9. LIMITATION ON LANDLORD'S LIABILITY. NOTWITHSTANDING ANYTHING SET FORTH IN THIS LEASE, OR ANY EXHIBIT, ADDENDUM OR AMENDMENT HERETO, LANDLORD SHALL NOT BE LIABLE TO TENANT FOR, AND TENANT ASSUMES ALL RISK OF LOSS, DAMAGE, OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL, TO: TENANT'S PERSONAL PROPERTY OF EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION, TRADE FIXTURES, EQUIPMENT, INVENTORY, SCIENTIFIC EXPERIMENTS, SCIENTIFIC RESEARCH, LABORATORY ANIMALS, PRODUCT, SPECIMENS, SAMPLES AND/OR SCIENTIFIC, BUSINESS, ACCOUNTING OR OTHER RECORDS KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM.

41.10. Impartial Construction. The language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

41.11. Inurement. Each of the covenants, conditions and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees, or any person who may come into possession of said Premises or any part thereof in any manner whatsoever. Nothing in this Section 41.11 contained shall in any way alter the provisions against assignment or subletting in this Lease provided.

41.12. Notices. Any notice, consent, demand, bill, statement, or other communication required or permitted to be given hereunder must be in writing and may be given by personal delivery or reputable

overnight courier, and if given by other means shall be deemed given when received, addressed to Tenant at the Premises, or to Tenant or Landlord at the addresses shown in Sections 1.2.3 and 1.2.5 of the Basic Lease Provisions. Either party may, by notice to the other given pursuant to this Section, specify additional or different addresses for notice purposes.

41.13. Jurisdiction. This Lease has been negotiated and entered into in the State in which the Premises is located and shall be governed by, construed and enforced in accordance with the laws of the State in which the Premises is located, applied to contracts made therein to be wholly performed therein.

41.14. Reporting. Tenant shall promptly provide Landlord with copies of Tenant's most recent public disclosure documents, including all reports on form 10-K, 10-Q and 8-K and Tenant's annual report to shareholders.

41.15. Authority. That individual or those individuals signing this Lease guarantee, warrant and represent that said individual or individuals have the power, authority and legal capacity to sign this Lease on behalf of and to bind all entities, corporations, partnerships, joint venturers or other organizations and/or entities on whose behalf said individual or individuals have signed.

41.16 Early Termination. Notwithstanding anything to the contrary contained in the Lease, Tenant shall have the right to terminate this Lease, with such termination to be effective only during the period from April 1, 2000 through and including August 31, 2003, upon the following terms and conditions:

a. Tenant must notify Landlord, in writing, no later than the date which is twelve months prior to the proposed effective date of such termination, of Tenant's election (the "**Termination Election**") to terminate this Lease; and

b. Concurrently with the delivery of the Termination Election, Tenant shall pay to Landlord an amount equal to the Termination Fee (as hereinafter defined).

Upon the effective date of any such termination, the Lease shall terminate and be of no further force or effect, except with respect to any liabilities, claims and obligations which may have arisen or which are based upon facts or circumstances which ocurred, prior to the effective date of any such termination. As used herein, **"Termination Fee"** shall mean the unamortized leasing commissions paid to Tenant's Broker in connection with this Lease, fully amortized over the initial Term of the Lease at a rate of 12% per annum, compounded monthly.

[Signatures begin on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

ARE ACQUISITIONS, LLC,
a Delaware limited liability company

By: ARE-QRS CORP., a Maryland corporation, managing member

By: /s/ Lynn Anne Shapiro
Name: LYNN ANNE SHAPIRO
Its: GENERAL COUNSEL

TENANT:

SHIRE LABORATORIES INC.,
a Delaware corporation

By: /s/ Robert S. Cohen
Robert S. Cohen, President and Chief Executive Officer

First Amendment To Lease – Shire Laboratories Inc./1550 Gude Drive

FIRST AMENDMENT TO LEASE

This First Amendment (the **"First Amendment"**) to Lease is made as of the day of November 1, 2002, by and between ARE ACQUISITIONS, LLC, a Delaware limited liability company, having an address at 135 North Los Robles Avenue, Suite 250, Pasadena, California 91101 (**"Landlord"),** and SHIRE LABORATORIES INC., a Delaware corporation, having an address at 1550 East Gude Drive, Rockville, Maryland 20850 (**"Tenant"**). Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease (as hereinafter defined).

RECITALS

A. Landlord and Tenant have entered into that certain Lease dated as of April 19, 1999 (the **"Lease"**), wherein Landlord leased to Tenant certain premises (the **"Premises"**) located at 1550 East Gude Drive, Rockville, Maryland 20850 and legally described on **Exhibit A** to the Lease. Capitalized terms not otherwise defined in this First Amendment shall have the definition set forth in the Lease.

B. The initial Term of the Lease commenced on April 20, 1999 and shall expire (subject to the other terms and conditions of the Lease) on April 30, 2004 ("Initial Term"). Tenant desires to extend the Initial Term of the Lease until April 30, 2006 and Landlord is willing to extend the Initial Term of the Lease on the terms herein set forth.

C. Landlord and Tenant desire to amend the Lease to, among other things, extend the Initial Term of the Lease.

AGREEMENT

Now, therefore, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Lease is amended as follows:

1. **Extension of Initial Term.** Effective as of the full execution hereof by Landlord and Tenant, the Initial Term of the Lease shall be extended from May 1, 2004, until April 30, 2006 (the **"Initial Extension Period"**). The Term Expiration Date set forth in the Lease and the Acknowledgement of Commencement Date executed by the parties, shall be adjusted accordingly, subject to further extension or earlier termination as provided in the Lease as amended hereby. Tenant shall have the right to further extend the Lease beyond the Initial Extension Period upon the terms and conditions set forth in the Right to Extend Term Addendum attached to the Lease and incorporated therein.

2. **Basic Annual Rent.** Basic Annual Rent during the Initial Extension Period shall be $806,370.84, subject to adjustment as provided for in Section 6 of the Lease. Basic Monthly Rent during the Initial Extension Period shall be $67,197.57.

3. **Modification of Early Termination.** Section 41.16 of the Lease is hereby amended by striking the reference to "August 31, 2003" and inserting in lieu thereof "April 30, 2005."

4. **Miscellaneous.**

(a) The Lease, as amended by this First Amendment, is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This First Amendment may be amended only by an agreement in writing, signed by the parties hereto.

(b) This First Amendment is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

(c) This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this First Amendment attached thereto.

(d) Landlord and Tenant each represent and warrant that it has not dealt with any broker, agent or other person (collectively **"Broker"**) in connection with this transaction other than Scheer Partners, Inc., and that no Broker, other than Scheer Partners, Inc., who shall be paid by Landlord pursuant to a separate agreement, brought about this transaction. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than Scheer Partners, Inc., claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

(e) Except as amended and/or modified by this First Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this First Amendment. In the event of any conflict between the provisions of this First Amendment and the provisions of the Lease, the provisions of this First Amendment shall prevail. Whether or not specifically amended by this First Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

(Signatures on Next Page)

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first above written.

TENANT:
SHIRE LABORATORIES INC.,
a Delaware corporation

By: /s/ Jack Khattar
Jack Khattar
President and CEO

LANDLORD:
ARE ACQUISITIONS, LLC,
a Delaware limited liability company
By: ARE-QRS CORP.,
a Maryland corporation,
it's managing member

By: /s/ Joel Marcus
Name: Joel Marcus
Title: CEO

EXHIBIT A

Shire Laboratories Lease

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY ON WHICH PREMISES LOCATED

All that lot or parcel of land located in the 4th Election District of Montgomery County, Maryland and described as follows:

Lot numbered Ten (10) in Block Lettered "B" in a Subdivision known as "Red Gate Industrial Park" as per plat thereof recorded in Plat Book 114 at plat 13648 among the Land Records of Montgomery County, Maryland.

Parcel I.D. No.: 2108733

Exhibit 10.7

CONFIDENTIAL

SECOND AMENDMENT TO LEASE

This Second Amendment (the **"Second Amendment"**) to Lease is made as of the 22nd day of December, 2005 (the **"Effective Date"**), by and among ARE-EAST GUDE LEASE, LLC, a Delaware limited liability company, having an address at 135 North Los Robles Avenue, Suite 250, Pasadena, California 91101 (**"Landlord"**), SHIRE LABORATORIES INC., a Delaware corporation, having an address at 1550 East Gude Drive, Rockville, Maryland 20850 (**"Original Tenant"**) and SUPERNUS PHARMACEUTICALS, INC., a Maryland corporation, having an address at 1550 East Gude Drive, Rockville, Maryland 20850 **("Tenant").** Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease (as hereinafter defined).

RECITALS

A. Landlord's affiliate, ARE ACQUISITIONS, LLC, a Delaware limited liability company ("**Original Landlord**") and Original Tenant entered into that certain Lease dated as of April 19, 1999 (the "**Original Lease"**), wherein Original Landlord leased to Original Tenant certain premises (the "**Premises**") located at 1550 East Gude Drive, Rockville, Maryland 20850 and more particularly described in the Lease.

B. Original Landlord and Original Tenant entered into that certain First Amendment to Lease, dated as of November 1, 2002 (the "**First Amendment"**) wherein Original Landlord and Original Tenant extended the term of the Original Lease until April 30, 2006 (the Original Lease, as amended by the First Amendment, is herein the **"Lease"**).

C. Original Landlord, as landlord and Landlord, as tenant, entered into that certain Master Lease dated as of August 7, 2003 (the "**Master Lease"**) thereby creating a leasehold estate in favor of Landlord superior to that of Original Tenant under the Lease, and in connection therewith, Landlord assumed all of Original Landlord's obligations under the Lease.

D. Tenant has acquired substantially all of the assets of Original Tenant. Original Tenant and Tenant desire to ratify and confirm Tenant's assumption of Original Tenant's obligations under the Lease and have Original Tenant released by Landlord of its future obligations under the Lease. Further, Tenant desires to extend the term of the Lease for a period of seven (7) years from the Commencement Date (as defined below), and to make certain other modifications to the terms of the Lease. Landlord is willing to recognize Tenant as the tenant under the Lease and release Original Tenant from such future obligations thereunder, and extend the term of the Lease and make certain other modifications in accordance with the terms hereof.

AGREEMENT

Now, therefore, the parties hereto agree that the Lease is amended as follows:

1. **Assignment and Assumption**. Effective as of the Effective Date, Original Tenant hereby irrevocably assigns, sets over, transfers and conveys to Tenant all of Original Tenant's right, title and interest in, to and under the Lease, and Tenant hereby accepts the assignment of such rights under the Lease and hereby expressly assumes all of the obligations and liabilities, fixed and contingent, of Original Tenant under the Lease, and agrees to abide and be bound by the terms of the Lease as amended hereby.

2. **Release**. Landlord hereby releases Original Tenant from any and all obligations or liabilities, whether fixed or contingent, arising from and after the Effective Date.

3. **Term**. The Term of the Lease shall be extended for an additional seven (7) year period beginning on May 1, 2006 (the **"Commencement Date"**) and, unless otherwise sooner terminated in accordance with the terms of the Lease, ending on April 30, 2013 (the **"Additional Term").** The Term Expiration Date set forth in the Lease and the Acknowledgement of Commencement Date executed in connection with the Original Lease, is hereby amended and shall mean the end of the Additional Term as provided herein.

4. **Extension Right**. The Right to Extend Addendum attached to the Lease and incorporated therein is hereby deleted in it entirety. In the alternative, Tenant shall have the right to extend the Additional Term of the Lease upon the following terms and conditions:

(a) **Extension Right.** Tenant shall have a one time right (the **"Extension Right"**) to extend the Additional Term for five (5) years (the **"Extension Term"**) on the same terms and conditions as this Lease (other than Annual Basic Rent) by giving Landlord written notice of its election to exercise each Extension Right at least nine (9) months prior to the Term Expiration Date.

(b) **Extension Term Basic Annual Rent.** Basic Annual Rent shall be adjusted on the commencement date of such Extension Term and on each annual anniversary of the commencement of such Extension Term by multiplying the Basic Annual Rent payable immediately before such adjustment by the Rent Adjustment Percentage and adding the resulting amount to the Basic Annual Rent payable immediately before such adjustment.

5. **Basic Annual Rent**. Basic Annual Rent for the first year of the Additional Term shall be $71,247.17 per month (calculated at $19.22 per rentable square foot, times the rentable square footage of 44,500 feet), and shall be adjusted on an annual basis in accordance with Section 6 of the Lease. Notwithstanding the foregoing, for the first six (6) months following the Commencement Date, fifty percent of the Basic Annual Rent attributable to the first floor of the Premises (or an amount equal to $17,334.04 per month, calculated at $19.22 per rentable square foot, times the rentable square footage on the first floor of the Premises of 21,645, divided by two) shall be abated from Tenant's payment obligations under the Lease.

6. **Operating Expenses**. The term **"Reimbursable Operating Expenses"** is hereby amended to include, in addition to the Impositions and Premiums (each as defined in the Lease), all building related costs incurred by Landlord in connection with the shell and core of the building, site improvements, maintenance, and capital repairs and improvements amortized over the useful life of such capital items (which useful life shall be no less than ten (10) years); provided however, that notwithstanding such definition, Tenant shall not be obligated for the amortization costs of such capital repair and improvement items in excess of $30,000 in any year of the Additional Term. The term Reimbursable Operating Expenses specifically excludes any of the following costs or expenses: (i) costs of correcting latent defects in the design of the Premises, regardless of when such defects are discovered; (ii) costs of any alterations, additions, changes, replacements or other items, which are solely intended to enhance the future marketing and leasing of the Premises; and (iii) and capital expenses incurred during the last year of the Additional Term.

For purposes of the Lease, (x) capital repair and improvement items shall mean those repair and improvements which are generally planned and made by Landlord with the intention of extending the useful life of the subject asset, and include, by way of example and not limitation, roof replacement, overlay or replacement of asphalt parking lot, sidewalk replacement of more than a few concrete sections, major caulking of the façade of the building, complete renovation and replacement of the landscaping around the building, replacement of the parking lot light fixtures,

and replacement of the underground plumbing due to obsolescence; and (y) operating expenses and repairs are items which are not intended to extend the useful life of the subject asset, and include, by way of example and not limitation, a roof repair not covered by an existing warranty, general landscaping work, a minor sidewalk replacement of no more than a few concrete sections, a minor patch in the asphalt, routine seal coating and striping of asphalt, repairing a broken pipe, minor caulking of the facade, repairing a parking lot light fixture.

In the event Tenant disputes and disagrees with Landlord's characterization of a certain repair or replacement item as either a capital repair and improvement item or an operating expense, Tenant shall give prompt written notice of such dispute and disagreement (**"Notice of Dispute"**) and shall include in such Notice of Dispute, specific detail outlining the nature of Tenant's dispute or disagreement and Tenant's proposed characterization of such repair or replacement item. Upon Landlord's receipt of any Notice of Dispute, Landlord agrees that it will review such dispute or disagreement with Tenant. Landlord and Tenant further agree to negotiate in good faith for a period not to exceed 14 days, a proposed resolution to Tenant's dispute or disagreement. In the event Landlord and Tenant fail to resolve such dispute or disagreement with said time period, then Landlord's characterization of such repair or replacement item shall govern.

7. **Maintenance and Repair Obligations.**

(a) Amendment to Section 7.2. Section 7.2 of the Lease is hereby amended to delete from Tenant's maintenance obligations, the maintenance of all grounds, landscaping, private roadways, sidewalks, curbs and parking areas of the Premises, and to add to Tenant's maintenance obligations, the maintenance of the elevators.

(b) Amendment to Section 7.4. Section 7.4 of the Lease is hereby deleted in its entirety.

(c) Amendment to Section 18.1. Section 18.1 of the Lease is hereby amended to add to Landlord's obligations, the maintenance and repair of all grounds, landscaping, private roadways, sidewalks, curbs, and parking areas of the Premises, and the roof of the building.

(d) Amendment to Section 18.2. Section 18.2 of the Lease is hereby amended to delete from Tenant's obligations, the maintenance and repair of the "roof and covering materials and parking areas."

8. **Improvement of Premises**. As described in the Work Letter attached hereto as **Exhibit A,** Landlord shall provide a Tenant Improvement Allowance of not more than $18.00 per rentable square foot of the Premises, or $801,000.00 in the aggregate (the **"TI Allowance"**), which TI Allowance shall be used for Interior Improvements (as defined in the Work Letter), and a Capital Improvement Allowance in the aggregate amount of $300,000 (the **"Capital Improvement Allowance"**), which Capital Improvement Allowance shall be used for Capital Improvements (as defined in the Work Letter).

9. **Security Deposit**. As a condition to the effectiveness of this Second Amendment, Tenant shall deposit with Landlord a new Security Deposit in the amount of $54,704.65 (the **"New Security Deposit")** as substitution for the original Security Deposit deposited held by Landlord on behalf of Original Tenant (the **"Original Security Deposit"**), which New Security Deposit shall be held as the "Security Deposit" required to be deposited under the Lease. Landlord shall hold the New Security Deposit in a separate interest bearing account, and such interest shall accrue to the

benefit of Tenant. Upon receipt of the New Security Deposit, Landlord shall return the Original Security Deposit to Original Tenant.

10. **Assignment or Subletting**. Section 25.2 of the Lease is hereby amended by adding the following sentence to the end thereof. "Notwithstanding the foregoing to the contrary, neither (i) a pledge, hypothecation, transfer or issuance of shares or other equity interests in Tenant to institutional investors who commonly or customarily invest in private biotechnology companies, consummated in connection with such investors' investment of capital in the Tenant or making of a loan to Tenant, nor (ii) any initial public offering of shares by Tenant, shall be deemed an assignment of the Lease requiring the consent of Landlord as provided in Section 25.1 above."

11. **Miscellaneous**.

(a) This Second Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Second Amendment may be amended only by an agreement in writing, signed by the parties hereto.

(b) This Second Amendment is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

(c) This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Second Amendment attached thereto.

(d) Landlord and Tenant each represent and warrant that it has not dealt with any broker, agent or other person (collectively **"Broker"**) in connection with this transaction other than Scheer Partners, Inc., and that no Broker, other than Scheer Partners, Inc., who shall be paid by Landlord pursuant to a separate agreement, brought about this transaction. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than Scheer Partners, Inc., claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

(e) Except as amended and/or modified by this Second Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this Second Amendment. In the event of any conflict between the provisions of this Second Amendment and the provisions of the Lease, the provisions of this Second Amendment shall prevail. Whether or not specifically amended by this Second Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this Second Amendment.

(Signatures on Next Page)

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

ORIGINAL TENANT:

SHIRE LABORATORIES INC.
a Delaware corporation

By: /s/ Scott Applebaum
Name: Scott Applebaum
Title: Secretary

TENANT:

SUPERNUS PHARMACEUTICALS, INC.
a Maryland corporation

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

LANDLORD:

ARE-EAST GUDE LEASE, LLC,
a Delaware limited liability company

By: **ARE ACQUISITIONS, LLC,**
a Delaware limited liability company
Its managing member

By: ARE-QRS CORP.,
a Maryland corporation,
its managing member

By: /s/ Jennifer Pappas
Name: JENNIFER PAPPAS
Title: V.P. & ASSISTANT SECRETARY

EXHIBIT A

WORK LETTER

THIS WORK LETTER dated December 22, 2005 (this **"Work Letter"**) is made and entered into by and between ARE-EAST GUDE LEASE, LLC, a Delaware limited liability company (**"Landlord"),** and SUPERNUS PHARMACEUTICALS, INC., a Maryland corporation (**"Tenant"**) and is attached to and made a part of the Second Amendment to Lease dated December 22, 2005 (the **"Second Amendment"**), by and among Landlord, SHIRE LABORATORIES INC., a Delaware corporation and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Second Amendment or Lease (as defined in the Second Amendment).

1. **General Requirements.**

(a) **Tenant's Authorized Representative.** Tenant designates Jack Khattar and Matt Priester (either such individual acting alone, **"Tenant's Representative"**) as the only persons authorized to act for Tenant pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry or other communication (**"Communication"**) from or on behalf of Tenant in connection with this Work Letter unless such Communication is in writing from Tenant's Representative. Tenant may change either Tenant's Representative at any time upon not less than 5 business days advance written notice to Landlord. No period set forth herein for any approval of any matter by Tenant's Representative shall be extended by reason of any change in Tenant's Representative. Neither Tenant nor Tenant's Representative shall be authorized to direct Landlord's contractors in the performance of Landlord's Work (as hereinafter defined).

(b) **Landlord's Authorized Representative.** Landlord designates Lawrence Diamond and Vin Ciruzzi (either such individual acting alone, **"Landlord's Representative"**) as the only persons authorized to act for Landlord pursuant to this Work Letter, Tenant shall not be obligated to respond to or act upon any request, approval, inquiry or other Communication from or on behalf of Landlord in connection with this Work Letter unless such Communication is in writing from Landlord's Representative. Landlord may change either Landlord's Representative at any time upon not less than 5 business days advance written notice to Tenant. No period set forth herein for any approval of any matter by Landlord's Representative shall be extended by reason of any change in Landlord's Representative. Landlord's Representative shall be the sole persons authorized to direct Landlord's contractors in the performance of Landlord's Work.

(c) **Architects, Consultants and Contractors.** Landlord and Tenant hereby acknowledge and agree that the architect (the **"TI Architect"**) for the Tenant Improvements, the general contractor and any subcontractors for the Tenant Improvements shall be selected by Tenant, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

2. **Tenant Improvements**.

(a) **Tenant Improvements Defined.** As used herein, **"Tenant Improvements"** shall mean all improvements to the interior portion of Premises of a fixed and permanent nature (the **"Interior Improvements"**) and those certain capital improvements and repairs to the Premises (such as replacement of the HVAC system, generator, boiler, etc.) desired by Tenant and approved

by Landlord (the **"Capital Improvements"**). Other than funding the TI Allowance and Capital Improvement Allowance (each as defined below) as provided herein, Landlord shall not have any obligation whatsoever with respect to the finishing of the Premises for Tenant's use and occupancy.

(b) **Tenant's Space Plans.** At any time during the Additional Term, Tenant shall deliver to Landlord schematic drawings and outline specifications (the **"TI Design Drawings"**) detailing Tenant's requirements for the Tenant Improvements, and containing a breakdown between the Interior Improvements and the Capital Improvements. Not more than 10 business days following Landlord's receipt of the TI Design Drawings, Landlord shall deliver to Tenant the written objections, questions or comments of Landlord and the TI Architect with regard to the TI Design Drawings. All Capital Improvements shall be subject to Landlord's prior review and approval. Tenant shall cause the TI Design Drawings to be revised to address such written comments and shall resubmit said drawings to Landlord for approval within 10 business days thereafter. Such process shall continue until Landlord has approved the TI Design Drawings.

(c) **Working Drawings.** Not later than 30 business days following the approval of the TI Design Drawings by Landlord, Tenant shall cause the TI Architect to prepare and deliver to Landlord for review and comment construction plans, specifications and drawings for the Tenant Improvements (**"TI Construction Drawings"**), which TI Construction Drawings shall be prepared substantially in accordance with the TI Design Drawings. Tenant shall be solely responsible for ensuring that the TI Construction Drawings reflect Tenant's requirements for the Tenant Improvements. Landlord shall deliver its written comments on the TI Construction Drawings to Tenant not later than 10 business days after Landlord's receipt of the same; provided, however, that Landlord may not disapprove any matter that is consistent with the TI Design Drawings. Tenant and the TI Architect shall consider all such comments in good faith and shall, within 10 business days after receipt, notify Landlord how Tenant proposes to respond to such comments. Any disputes in connection with such comments shall be resolved in accordance with Section 2(d) hereof. Once approved by Landlord, subject to the provisions of Section 2(d) below, Tenant shall not materially modify the TI Construction Drawings except as may be reasonably required in connection with the issuance of the TI Permit (as defined in Section 3(b) below) or as may be reasonably required due to changes in field conditions provided that such modifications do not increase the TI Costs or materially alter the scope of the Tenant Improvements.

(d) **Approval and Completion.** Upon any dispute regarding the design of the Tenant Improvements, which is not settled within 10 business days after notice of such dispute is delivered by one party to the other, Tenant shall make the final decision regarding the design of the Tenant Improvements, provided Tenant acts reasonably and such final decision is either consistent with or a compromise between Landlord's and Tenant's positions with respect to such dispute; provided further that all costs and expenses resulting from any such decision by Tenant shall be payable out of the TI Fund (as defined in Section 5(d) below). Any changes to the TI Construction Drawings following Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

3. **Performance of Tenant's Work.**

(a) **Definition of Tenant's Work.** As used herein, **"Tenant's Work"** shall mean the work of constructing the Tenant Improvements.

(b) **Commencement and Permitting of Tenant's Work.** Tenant shall commence construction of the Tenant Improvements upon obtaining a building permit (the **"TI Permit"**)

authorizing the construction of the Tenant Improvements consistent with the TI Construction Drawings approved by Landlord. The cost of obtaining the TI Permit shall be payable from the TI Fund. Landlord shall assist Tenant in obtaining the T1 Permit.

(c) **Selection of Materials, Etc.** Where more than one type of material or structure is indicated on the TI Construction Drawings approved by Tenant and Landlord, the option will be within Tenant's reasonable discretion.

4. **Changes.** Any changes requested by Tenant to the Tenant Improvements after the delivery and approval by Landlord of the TI Design Drawings, shall be requested and instituted in accordance with the provisions of this Section 4 and shall be subject to the written approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

(a) **Tenant's Right to Request Changes.** If Tenant shall request changes (**"Changes"**), Tenant shall request such Changes by notifying Landlord in writing in substantially the same form as the AIA standard change order form (a **"Change Request"**), which Change Request shall detail the nature and extent of any such Change. Such Change Request must be signed by Tenant's Representative. Landlord shall review and approve or disapprove such Change Request within 5 business days thereafter, provided that Landlord's approval shall not be unreasonably withheld, conditioned or delayed.

(b) **Implementation of Changes.** If Landlord approves such Change and Tenant deposits with Landlord any Excess TI Costs (as defined in Section 5(d) below) required in connection with such Change, Tenant may cause the approved Change to be instituted.

5. **Costs.**

(a) **Budget For Tenant Improvements.** Before the commencement of construction of the Tenant Improvements, Tenant shall obtain a detailed breakdown, by trade and between the Interior Improvements and the Capital Improvements, of the costs incurred or which will be incurred, in connection with the design and construction of Tenant's Work (the **"Budget"**). If the allocations within the Budget for Interior Improvements and Capital Improvements are greater than the respective TI Allowance and Capital Improvement Allowance, as applicable, Tenant shall demonstrate to Landlord, in Landlord's reasonable determination, prior to the commencement of construction of the Interior Improvements or Capital Improvements, as applicable, that Tenant has the resources and financial ability to fund such cost differential.

(b) **TI Allowance.** Landlord shall provide to Tenant a tenant improvement allowance to be used solely for the costs of the design and construction of Interior Improvements (**"TI Allowance"**) in the maximum amount of $18.00 per rentable square foot in the Premises, or $801,000 in the aggregate, which is included in the Basic Annual Rent set forth in the Second Amendment.

(c) **Capital Improvement Allowance.** Landlord shall provide to Tenant a capital improvement allowance to be used solely for the costs of the design and construction of Capital Improvements (**"Capital Improvement Allowance"**) in the aggregate amount of $300,000, which is included in the Basic Annual Rent set forth in the Second Amendment.

Both the TI Allowance and Capital Improvement Allowance shall be disbursed in accordance with this Work Letter. Tenant shall have no right to the use or benefit (including any reduction to

Base Rent) of any portion of the TI Allowance or Capital Improvement Allowance not required for the construction of (i) the Interior Improvements and Capital Improvements, as applicable, described in the TI Construction Drawings approved pursuant to Section 2(d) or (ii) any Changes pursuant to Section 4.

(d) **Costs Includable in TI Fund**. A fund (the **"TI Fund"**) shall be created and shall be comprised of two components, those funds to be used for the Interior Improvements and those to be used for the Capital Improvements and shall be used solely for the payment of design and construction costs in connection with the construction of the Interior Improvements or Capital Improvements, as applicable, and shall include, without limitation, the cost of preparing the applicable portions of the TI Design Drawings and the TI Construction Drawings, all costs set forth in the Budget, and the cost of Changes (collectively, **"TI Costs"**). Notwithstanding anything to the contrary contained herein, the TI Fund shall not be used to pay for any capital improvements not previously approved by Landlord, or to purchase any furniture, personal property or other non- Building System materials or equipment not previously approved by Landlord, including, but not be limited to scientific equipment not incorporated into the Improvements.

(e) **Excess TI Costs.** It is understood and agreed that Landlord is under no obligation to bear any portion of the cost of any of the Tenant Improvements except to the extent of the TI Allowance and Capital Improvement Allowance.

(f) **Payment for TI Costs.** Landlord shall pay TI Costs once a month against a draw request in Landlord's standard form, containing such certifications, lien waivers, inspection reports and other matters as Landlord customarily obtains, to the extent of Landlord's approval thereof for payment, no later than 30 days following receipt of such draw request. Upon completion of the Tenant Improvements, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (ii) "as built" plans for such Tenant Improvements.

6. **Miscellaneous.**

(a) **Consents.** Whenever consent or approval of either party is required under this Work Letter, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth herein to the contrary.

(b) **Modification.** No modification, waiver or amendment of this Work Letter or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

(c) **Counterparts.** This Work Letter may be executed in any number of counterparts but all counterparts taken together shall constitute a single document.

(d) **Governing Law.** This Work Letter shall be governed by, construed and enforced in accordance with the internal laws of the state in which the Premises are located, without regard to choice of law principles of such State.

(e) **Time of the Essence.** Time is of the essence of this Work Letter and of each and all provisions thereof.

(f) **Default.** Notwithstanding anything set forth herein or in the Lease to the contrary, Landlord shall not have any obligation to perform any work hereunder or to fund any portion of the TI Fund during any period Tenant is in Default under the Lease.

(g) **Severability.** If any term or provision of this Work Letter is declared invalid or unenforceable, the remainder of this Work Letter shall not be affected by such determination and shall continue to be valid and enforceable.

(h) **Merger.** All understandings and agreements, oral or written, heretofore made between the parties hereto and relating to Tenant's Work are merged in this Work Letter, which alone (but inclusive of provisions of the Lease incorporated herein and the final approved constructions drawings and specifications prepared pursuant hereto) fully and completely expresses the agreement between Landlord and Tenant with regard to the matters set forth in this Work Letter.

(i) **Entire Agreement.** This Work Letter is made as a part of and pursuant to the Lease and, together with the Lease, constitutes the entire agreement of the parties with respect to the subject matter hereof. This Work Letter is subject to all of the terms and limitation set forth in the Lease, and neither party shall have any rights or remedies under this Work Letter separate and apart from their respective remedies pursuant to the Lease.

[Signatures on next page]

Exhibit 10.8

THIRD AMENDMENT TO LEASE

This Third Amendment (the "**Amendment**") to Lease is made as of November 24, 2010, by and between **ARE-EAST GUDE LEASE, LLC,** a Delaware limited liability company ("**Landlord**"), successor-in-interest to **ARE ACQUISITIONS, LLC**, a Delaware limited liability company ("**Original Landlord**"), and **SUPERNUS PHARMACEUTICALS, INC.**, a Maryland corporation ("**Tenant**") successor-in-interest to **SHIRE LABORATORIES INC**., a Delaware corporation ("**Original Tenant**").

RECITALS

A. Original Landlord and Original Tenant entered into that certain Standard Form Multi-Tenant Net Lease dated as of April 19, 1999 (the "**Original Lease**") as amended by that certain First Amendment to Lease dated November 1, 2002 between Original Landlord and Original Tenant (the "**First Amendment**"). Original Landlord, as landlord, and Landlord, as tenant, entered into that certain Master Lease dated as of August 7, 2003 thereby creating a leasehold estate in favor of Landlord superior to that of Original Tenant under the Original Lease, as amended, and in connection therewith, Landlord assumed all of Original Landlord's obligations under the Original Lease, as amended. Landlord, Original Tenant and Tenant entered into that certain Second Amendment to Lease dated December 22, 2005 between Landlord and Tenant ("**Second Amendment**") whereby Tenant assumed Original Tenant's obligations under the Original Lease, as amended. The Original Lease, as amended by the First Amendment, the Second Amendment and this Amendment is hereinafter referred to collectively as the "**Lease**." Capitalized terms not otherwise defined in this Amendment shall have the meaning set forth in the Lease.

B. Pursuant to the Lease, Landlord subleases to Tenant certain premises (the "**Premises"**) located at 1550 East Gude Drive, Rockville, Maryland and more particularly described in the Lease.

C. Landlord and Tenant desire to amend the Lease to, among other things, extend the Term of the Lease.

AGREEMENT

Now, therefore, the parties hereto agree that the Lease is amended as follows:

1. **Term**. The Term of the Lease shall be extended for an additional five (5) year period (the "**Second Additional Term**") beginning on May 1, 2013 (the "**Second Additional Term Commencement Date**") and, unless otherwise sooner terminated in accordance with the terms of the Lease, ending on April 30, 2018 (the "**Second Additional Term Expiration Date**"). The Term Expiration Date, as such term is defined in Section 1.1.9 of the Lease, shall mean the Second Additional Term Expiration Date.

2. **Extension Option**. Section 4 of the Second Amendment is hereby deleted in it entirety; provided, however that the "Right to Extend Addendum" attached to the Original Lease and incorporated therein remains deleted in its entirety. In the alternative, Tenant shall have a one time right (the "**Extension Right**") to extend the Term beyond the Second Additional Term for one, five (5) year period (the "**Extension Term**") on the same terms and conditions as the Lease (other than Annual Basic Rent) by giving Landlord written notice of its election to exercise the Extension Right at least nine (9) months prior to the Second Additional Term Expiration Date.

3. **Rent Adjustments**.

(a) Subject to Section 4 below, Basic Annual Rent shall be payable pursuant to the Lease, without the adjustment described in Section 6 of the Original Lease, through October 30, 2013. Thereafter, Basic Annual Rent shall be payable pursuant to the Lease and adjusted as provided in Section 3(b) below.

(b) Section 6 of the Original Lease is hereby deleted in its entirety and replaced with the following.

"6. Rent Adjustment. Commencing on the November 1, 2013 and on each anniversary thereof through and including the Extension Term, if any, Basic Annual Rent shall be adjusted by multiplying the Basic Annual Rent payable immediately before such adjustment by Two Percent (2%) and adding the resulting amount to the Basic Annual Rent payable immediately before such adjustment."

3. **Basic Rent Abatement**. So long as Tenant is not in Default under the Lease, Basic Monthly Rent shall be abated for the months of (i) November and December 2010, and (ii) January through April 2011.

4. **Improvement of Premises**. As described in the Work Letter attached hereto as **Exhibit A** ("**Work Letter**"), and subject to the terms and conditions thereof, Landlord shall provide a Tenant Improvement Allowance of $1,250,000 in the aggregate (the "**TI Allowance**"), which TI Allowance shall be used to improve the interior portion of the Premises or as otherwise set forth in the Work Letter. Further, Landlord and Tenant will make certain capital improvements and repairs to the base building as set forth in the Work Letter.

5. **OFAC**. Tenant, and all beneficial owners of Tenant, are currently (a) in compliance with and shall at all times during the Term of this Lease remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the "OFAC Rules"), (b) not listed on, and shall not during the term of this Lease be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.

6. **Miscellaneous**.

(a) This Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Amendment may be amended only by an agreement in writing, signed by the parties hereto.

(b) This Amendment is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

(c) This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any

other counterpart identical thereto except having additional signature pages executed by other parties to this Amendment attached thereto.

(d) Landlord and Tenant each represent and warrant that it has not dealt with any broker, agent or other person (collectively "**Broker**") in connection with this transaction, and that no Broker brought about this transaction. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

(e) Except as amended and/or modified by this Amendment, the Lease is hereby ratified and confirmed and all other terms of the Lease shall remain in full force and effect, unaltered and unchanged by this Amendment. In the event of any conflict between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall prevail. Whether or not specifically amended by this Amendment, all of the terms and provisions of the Lease are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment.

(Signatures on Next Page)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

TENANT:

SUPERNUS PHARMACEUTICALS, INC.
a Maryland corporation

By: /s/ Jack Khattar
Its: President & CEO

LANDLORD:

ARE-EAST GUDE LEASE, LLC,
a Delaware limited liability company

By: ARE ACQUISITIONS, LLC
a Delaware limited liability company
Its managing member

By: ARE-QRS CORP.,
a Maryland corporation,
its managing member

By: /s/ Jackie Clem
VP Real Estate Legal Affairs

EXHIBIT A
WORK LETTER

THIS WORK LETTER dated November 24, 2010 (this "**Work Letter**") is made and entered into by and between **ARE-EAST GUDE LEASE, LLC**, a Delaware limited liability company ("**Landlord**"), and **SUPERNUS PHARMACEUTICALS, INC**., a Maryland corporation ("**Tenant**") and is attached to and made a part of the Third Amendment to Lease of even date herewith (the "**Third Amendment**"), by and among Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Third Amendment or Lease (as defined in the Third Amendment).

1. **General Requirements**.

(a) **Tenant's Authorized Representative.** Tenant designates Jack Khattar, Rip Wilson, and Frank Mottola (any such individual acting alone, "**Tenant's Representative**") as the only persons authorized to act for Tenant pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry or other communication ("**Communication**") from or on behalf of Tenant in connection with this Work Letter unless such Communication is in writing from Tenant's Representative. Tenant may change either Tenant's Representative at any time upon not less than 5 business days advance written notice to Landlord. No period set forth herein for any approval of any matter by Tenant's Representative shall be extended by reason of any change in Tenant's Representative. Neither Tenant nor Tenant's Representative shall be authorized to direct Landlord's contractors in the performance of Landlord's Work (as defined in Section 6 below).

(b) **Landlord's Authorized Representative.** Landlord designates Lawrence Diamond and Hayro Zelaya (either such individual acting alone, "**Landlord's Representative**") as the only persons authorized to act for Landlord pursuant to this Work Letter. Tenant shall not be obligated to respond to or act upon any request, approval, inquiry or other Communication from or on behalf of Landlord in connection with this Work Letter unless such Communication is in writing from Landlord's Representative. Landlord may change either Landlord's Representative at any time upon not less than 5 business days advance written notice to Tenant. No period set forth herein for any approval of any matter by Landlord's Representative shall be extended by reason of any change in Landlord's Representative. Landlord's Representative shall be the sole persons authorized to direct Landlord's contractors in the performance of Landlord's Work.

(c) **Architects, Consultants and Contractors.** Landlord and Tenant hereby acknowledge and agree that the architect (the "**TI Architect**") for the Tenant Improvements (defined below), the general contractor and any subcontractors for the Tenant Improvements shall be selected by Tenant, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

2. **Tenant Improvements**.

(a) **Tenant Improvements Defined.** As used herein, "**Tenant Improvements**" shall mean all improvements to the interior portion of Premises of a fixed and permanent nature (the "**Interior Improvements**") and those certain capital improvements (as defined by generally accepted accounting principles) to the Premises desired by Tenant and approved by Landlord (the "**Capital Improvements**"). Notwithstanding anything to the contrary in this Work Letter, Landlord's approval of any Capital Improvements shall not be unreasonably withheld, conditioned or delayed.

Landlord shall not have any obligation whatsoever with respect to the finishing of the Premises for Tenant's use and occupancy other than (i) funding the TI Allowance and the Unused Capital Improvement Allowance (defined below), and (ii) Landlord's obligations under Section 5(d), Section 5(e) and Section 6.

(b) **Tenant's Space Plans.** At any time from the mutual execution and delivery of the Third Amendment through the Second Additional Term Expiration Date, Tenant shall deliver to Landlord schematic drawings and outline specifications (the "**TI Design Drawings**") detailing Tenant's requirements for the Tenant Improvements, and containing a breakdown between the Interior Improvements and the Capital Improvements. Not more than 10 business days following Landlord's receipt of the TI Design Drawings, Landlord shall deliver to Tenant the written objections, questions or comments of Landlord and the TI Architect with regard to the TI Design Drawings. All Capital Improvements shall be subject to Landlord's prior review and approval. Tenant shall cause the TI Design Drawings to be revised to address such written comments and shall resubmit said drawings to Landlord for approval within 10 business days thereafter. Such process shall continue until Landlord has approved the TI Design Drawings.

(c) **Working Drawings.** Not later than 30 business days following the approval of the TI Design Drawings by Landlord, Tenant shall cause the TI Architect to prepare and deliver to Landlord for review and comment construction plans, specifications and drawings for the Tenant Improvements ("**TI Construction Drawings**"), which TI Construction Drawings shall be prepared substantially in accordance with the TI Design Drawings. Tenant shall be solely responsible for ensuring that the TI Construction Drawings reflect Tenant's requirements for the Tenant Improvements. Landlord shall deliver its written comments on the TI Construction Drawings to Tenant not later than 10 business days after Landlord's receipt of the same; provided, however, that Landlord may not disapprove any matter that is consistent with the TI Design Drawings. Tenant and the TI Architect shall consider all such comments in good faith and shall, within 10 business days after receipt, notify Landlord how Tenant proposes to respond to such comments. Any disputes in connection with such comments shall be resolved in accordance with Section 2(d) hereof. Once approved by Landlord, subject to the provisions of Section 2(d) below, Tenant shall not materially modify the TI Construction Drawings except as may be reasonably required in connection with the issuance of the TI Permit (as defined in Section 3(b) below) or as may be reasonably required due to changes in field conditions provided that such modifications do not increase the TI costs (defined below) or materially alter the scope of the Tenant Improvements.

(d) **Approval and Completion.** Upon any dispute regarding the design of the Tenant Improvements, which is not settled within 10 business days after notice of such dispute is delivered by one party to the other, Tenant shall make the final decision regarding the design of the Tenant Improvements, provided Tenant acts reasonably and such final decision is either consistent with or a compromise between Landlord's and Tenant's positions with respect to such dispute, provided further that all costs and expenses resulting from any such decision by Tenant shall be payable out of the TI Fund (as defined in Section 5(g) below). Any changes to the TI Construction Drawings following Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

3. **Performance of Tenant's Work**.

(a) **Definition of Tenant's Work.** As used herein, "**Tenant's Work**" shall mean the work of constructing the Tenant Improvements.

(b) **Commencement and Permitting of Tenant's Work.** Tenant shall commence construction of the Tenant Improvements upon obtaining a building permit (the "**TI Permit**") authorizing the construction of the Tenant Improvements consistent with the TI Construction Drawings approved by Landlord. The cost of obtaining the TI Permit shall be payable from the TI Fund. Landlord shall assist Tenant in obtaining the TI Permit.

(c) **Selection of Materials, Etc.** Where more than one type of material or structure is indicated on the TI Construction Drawings approved by Tenant and Landlord, the option will be within Tenant's reasonable discretion.

4. **Changes.** Any changes requested by Tenant to the Tenant Improvements after the delivery and approval by Landlord of the TI Design Drawings, shall be requested and instituted in accordance with the provisions of this Section 4 and shall be subject to the written approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

(a) **Tenant's Right to Request Changes.** If Tenant shall request changes ("**Changes**"), Tenant shall request such Changes by notifying Landlord in writing in substantially the same form as the AIA standard change order form (a "**Change Request**"), which Change Request shall detail the nature and extent of any such Change. Such Change Request must be signed by Tenant's Representative. Landlord shall review and approve or disapprove such Change Request within 8 business days thereafter, provided that Landlord's approval shall not be unreasonably withheld, conditioned or delayed.

(b) **Implementation of Changes.** If Landlord approves such Change and Tenant deposits with Landlord any Excess TI Costs (as defined in Section 5(g) below) required in connection with such Change, Tenant may cause the approved Change to be instituted.

5. **Costs**.

(a) **Budget For Tenant Improvements.** Before the commencement of construction of the Tenant Improvements, Tenant shall obtain a detailed breakdown, by trade and between the Interior Improvements and the Capital Improvements, of the costs incurred or which will be incurred, in connection with the design and construction of Tenant's Work (the "**Budget**"). The Budget shall be based upon the TI Construction Drawings approved by Landlord.

(i) If the allocations within the Budget for Interior Improvements and Capital Improvements collectively exceed the TI Allowance plus the Unused Capital Improvement Allowance, by more than $100,000, then Tenant shall, prior to the commencement of construction of the Interior Improvements or Capital Improvements, deposit with Landlord the difference in cash for disbursement by Landlord as described in Section 5(h).

(ii) If the allocations within the Budget for Interior Improvements and Capital Improvements collectively exceed the TI Allowance plus the Unused Capital Improvement Allowance, by $100,000 or less, then Tenant shall, prior to the commencement of construction of the Interior Improvements or Capital Improvements, provide Landlord with evidence that Tenant, in Landlod's reasonable judgment, has the resources and financial ability to fund such cost differential.

(b) **TI Allowance.** Subject to the terms and conditions of this Work Letter, Landlord shall provide to Tenant a tenant improvement allowance ("**TI Allowance**") in the amount of **$1,250,000.00** in the aggregate, which is included in the Basic Annual Rent set forth in the Third Amendment.

(c) **Unused Capital Improvement Allowance**. Pursuant to the Second Amendment (as defined in the Lease) Landlord agreed to provide to Tenant a capital improvement allowance to be used solely for the costs of the design and construction of Capital Improvements in the aggregate amount of $300,000 (**"Capital Improvement Allowance**"). As of the date of the Third Amendment, Tenant has used a portion of the Capital Improvement Allowance totaling $126,958.30 and a portion of the Capital Improvement Allowance totaling $173,041.70 (the **"Unused Capital Improvement Allowance**") remains unused. Tenant shall apply the Unused Capital Improvement Allowance in accordance with Section 5(d) below.

Both the TI Allowance and Unused Capital Improvement Allowance shall be disbursed in accordance with this Work Letter. Tenant shall have the right to the use the TI Allowance for the construction of (i) the Interior Improvements and Capital Improvements described in the TI Construction Drawings approved pursuant to Section 2(d), (ii) any Changes pursuant to Section 4 or (iii) any other Capital Improvements (other than the Capital Improvements described in Section 5(d) or Section 5(e)) approved by the Landlord from time to time prior to the Second Additional Term Expiration Date; provided, however, that Tenant shall not have the right to use the TI Allowance for any reduction in Base Rent or for any purpose not described in subsections (i)-(iii) of this paragraph..

(d) **Replacement of the HVAC Carrier Unit**. Tenant shall replace the HVAC Carrier Unit including the VAV valves/boxes ("**HVAC Carrier Unit**"). The cost of the replacement of the HVAC Carrier Unit as shown in the proposal from Mechanical Engineering and Construction Corp. dated November 16, 2010 is $309,000 (the "**HVAC Carrier Unit Cost**"). The Unused Capital Improvement Allowance shall be applied to the HVAC Carrier Unit Cost and Landlord shall reimburse Tenant for the remaining HVAC Carrier Unit Cost in an amount equal to $135,958.30 in accordance with Section 5(i) below. Tenant shall have no right to use the Unused Capital Improvement Allowance for any reduction in Base Rent or for any purpose not described in Section 5(d).

(e) **Other Capital Improvement Reimbursement**. Tenant shall replace the 6 rooftop, HVAC units and Landlord shall reimburse Tenant for the actual cost of such replacement in accordance with Section 5(i) below.

(f) **Costs Includable in TI Fund.** The TI Fund shall be comprised of two components, those funds to be used for the Interior Improvements and those to be used for the Capital Improvements and shall be used solely for the payment of design and construction costs in connection with the construction of the Interior Improvements or Capital Improvements, as applicable, and shall include, without limitation, the cost of preparing the applicable portions of the TI Design Drawings and the TI Construction Drawings, all costs set forth in the Budget, including the cost of Changes (collectively, "**TI Costs**"). Notwithstanding anything to the contrary contained herein, the TI Fund shall not be used to pay for any Capital Improvements not previously approved by Landlord, or to purchase any furniture, personal property or other non-Building System materials or equipment, including, but not be limited to, biological safety cabinets and other scientific equipment not incorporated into the Improvements. For clarification purposes, the TI Fund may be used by Tenant to pay for Capital Improvements approved in advance by Landlord from time to time through the Second Additional Term Expiration Date.

(g) **Excess TI Costs.** Subject to Section 5(d) and Section 5(e), it is understood and agreed that Landlord is under no obligation to bear any portion of the cost of any of the Tenant Improvements except to the extent of the TI Allowance and Unused Capital Improvement Allowance.

(i) If at any time and from time-to-time, the remaining TI Costs under the Budget allocated to the Interior Improvements and Capital Improvements, collectively exceed the amount of the remaining unexpended TI Allowance plus the Unused Capital Improvement Allowance, by more than $100,000, then Tenant shall deposit with Landlord, as a condition precedent to Landlord's obligation to complete the Tenant Improvements, 100% of the then current TI Cost in excess of the remaining TI Allowance or Unused Capital Improvement Allowance ("**Excess TI Costs**"). If Tenant fails to deposit, or is late in depositing, any Excess TI Costs with Landlord, Landlord shall have all of the rights and remedies set forth in the Lease for nonpayment of Rent (including, but not limited to, the right to interest at the Default Rate and the right to assess a late charge), and for purposes of any litigation instituted with regard to such amounts the same will be considered Rent.

(ii) If at any time and from time-to-time, the remaining TI Costs under the Budget allocated to the Interior Improvements and Capital Improvements, collectively exceed the amount of the remaining unexpended T1 Allowance plus the Unused Capital Improvement Allowance, by $100,000 or less, then Tenant shall, provide Landlord with evidence that Tenant, in Landlord's reasonable judgment, has the resources and financial ability to fund such cost differential.

(iii) Such Excess TI Costs, together with the remaining TI Allowance and Unused Capital Improvement Allowance, is herein referred to as the "**TI Fund**." Funds so deposited by Tenant shall be the first thereafter disbursed to pay TI Costs. Notwithstanding anything to the contrary set forth in this Section 5(g), Tenant shall be fully and solely liable for TI Costs. If upon substantial completion of the Tenant Improvements and the payment of all sums due in connection therewith there remains any undisbursed TI Fund, Tenant shall be entitled to such undisbursed TI Fund solely to the extent of any Excess TI Costs deposit Tenant has actually made with Landlord.

(h) **Payment for TI Costs.** Landlord shall pay TI Costs once a month against a draw request in Landlord's standard form, containing such certifications, lien waivers, inspection reports and other matters as Landlord customarily obtains, to the extent of Landlord's approval thereof for payment, no later than 30 days following receipt of such draw request. Upon completion of the Tenant Improvements, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (ii) "as built" plans for such Tenant Improvements.

(i) **Reimbursements**. Landlord shall pay any amounts owed pursuant to Section 5(d) or Section 5(e) within 30 days of Landlord's receipt of written invoice from Tenant together with any other documentation reasonably required by Landlord including, certifications, lien waivers, inspection reports, invoices and any other matters Landlord customarily obtains.

6. **Landlord's Work**. Within a reasonable time from the execution of the Third Amendment, Landlord shall, at Landlord's sole cost and expense, recaulk the windows to eliminate air infiltration and install solar film (collectively, "**Landlord's Work**"). Tenant acknowledges that Landlord shall require access to portions of the Premises in order to complete Landlord's Work. Landlord and its contactors and agents shall have the right to enter the Premises to complete Landlord's Work and Tenant shall cooperate with Landlord in connection with the same. Tenant acknowledges that Landlord's completion of Landlord's Work may adversely affect Tenant's use and occupancy of the Premises. Tenant waives all claims against Landlord in connection with Landlord's Work including, without limitation, claims for rent abatement

7. **Miscellaneous**.

(a) **Consents.** Whenever consent or approval of either party is required under this Work Letter, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth herein to the contrary.

(b) **Modification.** No modification, waiver or amendment of this Work Letter or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

(c) **Counterparts.** This Work Letter may be executed in any number of counterparts but all counterparts taken together shall constitute a single document.

(d) **Governing Law.** This Work Letter shall be governed by, construed and enforced in accordance with the internal laws of the state in which the Premises are located, without regard to choice of law principles of such State.

(e) **Time of the Essence.** Time is of the essence of this Work Letter and of each and all provisions thereof.

(f) **Default.** Notwithstanding anything set forth herein or in the Lease to the contrary, Landlord shall not have any obligation to perform any work hereunder or to fund any portion of the TI Fund during any period Tenant is in Default under the Lease.

(g) **Severability.** If any term or provision of this Work Letter is declared invalid or unenforceable, the remainder of this Work Letter shall not be affected by such determination and shall continue to be valid and enforceable.

(h) **Merger.** All understandings and agreements, oral or written, heretofore made between the parties hereto and relating to Tenant's Work are merged in this Work Letter, which alone (but inclusive of provisions of the Lease incorporated herein and the final approved constructions drawings and specifications prepared pursuant hereto) fully and completely expresses the agreement between Landlord and Tenant with regard to the matters set forth in this Work Letter.

(i) **Entire Agreement.** This Work Letter is made as a part of and pursuant to the Lease and, together with the Lease, constitutes the entire agreement of the parties with respect to the subject matter hereof. This Work Letter is subject to all of the terms and limitation set forth in the Lease, and neither party shall have any rights or remedies under this Work Letter separate and apart from their respective remedies pursuant to the Lease.

[Signatures on next page]

IN WITNESS WHEREOF, Landlord, and Tenant have executed this Work Letter to be effective on the date first above written.

TENANT:

SUPERNUS PHARMACEUTICALS, INC.
a Maryland corporation

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

LANDLORD:

ARE-EAST GUDE LEASE, LLC,
a Delaware limited liability company

By: **ARE ACQUISITIONS, LLC**,
a Delaware limited liability company
Its managing member

By: ARE-QRS CORP.,
a Maryland corporation,
its managing member

By: /s/ Jackie Clem
Name: Jackie Clem
Title VP Real Estate Legal Affairs

Exhibit 10.9

INVESTOR RIGHTS AGREEMENT

INVESTOR RIGHTS AGREEMENT (the "Agreement") is entered into as of the 22nd day of December 2005, by and among Supernus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and the holders of shares of Series A Convertible Preferred Stock, par value $0.001 per share (the "Series A Preferred Stock") listed on the Schedule of Investors annexed hereto and each person who shall, after the date hereof, acquire shares of Series A Preferred Stock and join in and become a party to this Agreement by executing and delivering to the Company an Instrument of Accession in the form of Schedule I hereto (collectively the "Investors").

WHEREAS, one of the conditions to the obligations of the Investors under the Purchase Agreement is the execution of this Agreement, and the Company is willing to enter into this Agreement and be bound by the provisions hereof.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Board of Directors" shall mean the board of directors of the Company as constituted from time to time.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Commission" shall mean the Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act.

"Common Stock" shall mean the Common Stock, $0.001 par value, of the Company, as constituted as of the date of this Agreement.

"Conversion Shares" shall mean shares of Common Stock issued or issuable upon conversion of the shares of Preferred Stock. For the purposes of this Agreement, all of the Conversion Shares which any Investor has the right to acquire from the Company upon the conversion of any shares of Series A Preferred Stock then owned by such Investor shall be deemed to be Conversion Shares then owned by such Investor.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Indebtedness" shall mean all obligations, contingent and otherwise, which should, in accordance with generally accepted accounting principles, be classified upon the obligor's balance sheet (or the notes thereto) as liabilities, but in any event including liabilities secured by any mortgage on property owned or acquired subject to such mortgage, whether or not the liability secured thereby shall have been assumed, and also including (i) all guaranties, endorsements and other contingent obligations, in respect of Indebtedness of others, whether or not the same are or should be so reflected in said balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business and (ii) the present value of any lease payments due under leases required to be capitalized in accordance with applicable Statements of Financial Accounting Standards, determined by discounting all such payments at the interest rate determined in accordance with applicable Statements of Financial Accounting Standards.

"Intellectual Property Rights" shall mean all of the following: (i) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, re-examination, utility, model, certificate of invention and design patents, patent applications, registrations and applications for registrations, (ii) trademarks, service marks, trade dress, logos, tradenames, service names and corporate names and registrations and applications for registration thereof, (iii) copyrights and registrations and applications for registration thereof, (iv) mask works and registrations and applications for registration thereof, (v) trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, (vi) other proprietary rights relating to any of the foregoing (including without limitation associated goodwill and remedies against infringements thereof and rights of protection of an interest therein under the laws of all jurisdictions) and (vii) copies and tangible embodiments thereof.

"Key Employee" or "Key Employees" shall mean and include the president, chief executive officer, chief financial officer, chief operating officer, chief technology officer, vice presidents of operations, research, development, sales or marketing, or any other individual who performs a significant role in the operations of the Company or as may be reasonably designated by the Board of Directors of the Company.

"Person or Persons" shall mean an individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

"Preferred Stock" shall mean the Series A Preferred Stock.

"Purchase Agreement" shall mean the Series A Convertible Preferred Stock Purchase Agreement by and among the Company and the Investors dated as of the date hereof.

"Qualified Public Offering" shall mean the completion of a fully underwritten, firm commitment public offering pursuant to an effective registration under the Securities Act covering the offering or sale by the Company of its Common Stock in which (x) the gross proceeds received by the Company shall be at least $35 million, and (y) the price paid by the public for such shares shall be at least three (3) times the original purchase price per share paid to the Company for the Series A Preferred Stock pursuant to the Purchase Agreement (appropriately adjusted to reflect any subdivision or combination of the Common Stock).

"Registration Expenses" shall mean the expenses so described in Section 8.

"Reserved Employee Shares" shall mean an aggregate of eight million (8,000,000) shares of Common Stock authorized under the Company's 2005 Stock Plan, of which three million five hundred thousand (3,500,000) shares of Common Stock have been issued as restricted stock as the date hereof or are issuable upon the exercise of options outstanding as of the date hereof and four million five hundred thousand (4,500,000) shares of Common Stock (appropriately adjusted to reflect any stock split, stock dividend, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capitalization of the Company) reserved by the Company from time to time for (i) the sale of shares of Common Stock to employees, consultants or non-employee directors of the Company or (ii) the issuance and/or exercise of options to purchase Common Stock granted to employees, consultants or non-employee directors of the Company, in each case pursuant to any stock plan approved by the Board of Directors. The foregoing number of Reserved Employee Shares may be increased by approval of a majority of the members of the Board of Directors.

"Restricted Stock" shall mean the Conversion Shares, excluding Conversion Shares which have been (a) registered under the Securities Act pursuant to an effective registration statement filed thereunder and disposed of in accordance with the registration statement covering them or (b) publicly sold pursuant to Rule 144 under the Securities Act.

"Securities Act" shall mean the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Selling Expenses" shall mean the expenses so described in Section 8.

"Shire" means Shire Laboratories Inc., a Delaware corporation.

"Subsidiary" or "Subsidiaries" shall mean any corporation or trust of which the Company and/or any of its other Subsidiaries (as herein defined) directly or indirectly owns at the time outstanding shares of every class of such corporation or trust other than directors' qualifying shares comprising at least fifty percent (50%) of the voting power of such corporation or trust.

2. Restrictive Legend. Each certificate representing Preferred Stock, Conversion Shares or Restricted Stock shall, except as otherwise provided in this Section 2 or in Section 3, be stamped or otherwise imprinted with a legend substantially in the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS, OR THE AVAILABILITY OF AN EXEMPTION FROM THE REGISTRATION PROVISIONS OF THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS."

A certificate shall not bear such legend if in the opinion of counsel satisfactory to the Company (it being agreed that Schmeltzer, Aptaker & Shepard, PC shall be satisfactory) the securities represented thereby may be publicly sold without registration under the Securities Act and any applicable state securities laws.

3. Notice of Proposed Transfer. Prior to any proposed transfer of any Preferred Stock, Conversion Shares or Restricted Stock (other than under the circumstances described in Sections 4, 5 or 6), the holder thereof shall give written notice to the Company of its intention to effect such transfer. Each such notice shall describe the manner of the proposed transfer and, if requested by the Company, shall be accompanied by an opinion of counsel satisfactory to the Company (it being agreed that Schmeltzer, Aptaker & Shepard, PC shall be satisfactory) to the effect that the proposed transfer may be effected without registration under the Securities Act and any applicable state securities laws, whereupon the holder of such stock shall be entitled to transfer such stock in accordance with the terms of its notice; *provided, however,* that no such opinion of counsel shall be required for a transfer to one or more partners or members of the transferor (in the case of a transferor that is a partnership or a limited liability company, respectively), or to an affiliated business entity (in the case of a transferor that is a corporation); *provided, further, however,* that any transferee other than a transferee receiving such shares for no consideration shall execute and deliver to the Company a representation letter in form reasonably satisfactory to the Company's counsel to the effect that the transferee is acquiring such shares for its own account, for investment purposes and without any view to distribution thereof. Each certificate for Preferred Stock, Conversion Shares or Restricted Stock transferred as above provided shall bear the legend set forth in Section 2, except that such certificate shall not bear such legend if (i) such transfer is in accordance with the provisions of Rule 144 (or any other rule permitting public sale without registration under the Securities Act) or (ii) the opinion of counsel referred to above is to the further effect that the transferee and any subsequent transferee (other than an affiliate of the Company) would be entitled to transfer such securities in a public sale without registration under the Securities Act. The restrictions provided for in this Section 3 shall not apply to securities which are not required to bear the legend prescribed by Section 2 in accordance with the provisions of that Section.

4. Required Registration.

(a) At any time after the earlier of (i) three years from the date hereof or (ii) six months after the Company's initial public offering, the holders of Restricted Stock may request the Company to register under the Securities Act all or any portion of the shares of Restricted Stock held by such requesting holder or holders for sale in the manner specified in such notice; *provided* that at least thirty-five percent (35%) of the outstanding shares of Restricted Stock are to be included in such registration (or a lesser percentage if the aggregate offering price to the public would exceed $5,000,000). For purposes of this Section 4 and Sections 5, 6, 15(a) and 15(e), the term "Restricted Stock" shall be deemed to include the number of shares of Restricted Stock which would be issuable to a holder of Preferred Stock; *provided, however,* that the only securities which the Company shall be required to register pursuant hereto shall be shares of Common Stock; *provided, further, however,* that, in any underwritten public offering contemplated by this Section 4 or Sections 5 and 6, the holders of Preferred Stock shall be entitled to sell such Preferred Stock to the underwriters for conversion and sale of the shares of Common Stock issued upon conversion or exercise and conversion, as applicable, thereof. Notwithstanding anything to the contrary contained herein, no request may be made under this Section 4 within 180 days after the effective date of any registration statement on Form S-1 filed by the Company.

(b) Following receipt of any notice under this Section 4, the Company shall immediately notify all holders of Restricted Stock and Preferred Stock from whom notice has not been received and such holders shall then be entitled within 30 days thereafter to request the Company to include in the requested registration all or any portion of their shares of Restricted Stock. The Company shall use its best efforts to register under the Securities Act, for public sale in accordance with the method of disposition described in paragraph (a) above, the number of shares of Restricted Stock specified in such notice (and in all notices received by the Company from other holders within 30 days after the giving of such notice by the Company). The Company shall be obligated to register Restricted Stock pursuant to this Section 4 on two occasions only (except for on Form S-3 or any equivalent successor form); *provided, however,* that such obligation shall be deemed satisfied (i) when a registration statement covering all shares of Restricted Stock specified in notices received as aforesaid for sale in accordance with the method of disposition specified by the requesting holders shall have become effective and, if such method of disposition is a firm commitment underwritten public offering, all such shares shall have been sold pursuant thereto (not including shares eligible for sale pursuant to the underwriters' over-allotment option); or (ii) if a registration statement covering all shares of Restricted Stock specified in notices received as aforesaid has been withdrawn prior to the consummation of the offering at the request of the holders of Restricted Stock and Preferred Stock initiating such registration pursuant to Section 4(a) (other than as a result of a material adverse change in the business or condition, financial or otherwise, of the Company) and such holders have elected to have the Company pay the Registration Expenses (as defined in Section 8) for such withdrawn registration; *provided further, however,* that such obligation shall not be deemed satisfied if a registration is withdrawn after the holders of Restricted Stock initiating such registration have learned of a material adverse change in the financial condition or prospects of the Company or have learned of other material adverse information relating to the Company, in either case not known to such holders at the time of their request for such registration.

(c) The Company shall be entitled to include in any registration statement referred to in this Section 4 shares of Common Stock to be sold by the Company for its own account, except as and to the extent that, in the opinion of the managing underwriter, such inclusion would adversely affect the marketing of the Restricted Stock to be sold. Except for registration statements on Form S-4, S-8 or any successor thereto, the Company will not file with the Commission any other registration statement with respect to its Common Stock, whether for its own account or that of other stockholders, from the date of receipt of a notice from requesting holders requesting sale pursuant to an underwritten offering pursuant to this Section 4 until the completion of the period of distribution of the registration contemplated thereby.

(d) In connection with any underwritten public offering pursuant to this Section 4 or Section 6, holders of seventy-five percent (75%) in interest of the outstanding shares of Restricted Stock requesting the registration of shares may designate the managing underwriter of such offering, subject to the approval of the Company which approval shall not be unreasonably withheld, delayed or conditioned. The right of any holder to include its Restricted Stock in such registration statement pursuant to Section 4 or Section 6 as the case may be, shall be conditioned upon such holder's participation in such underwriting on the terms set forth herein.

5. Incidental Registration. If the Company at any time (other than pursuant to Section 4 or Section 6) proposes to register any of its securities under the Securities Act for sale to the public, whether for its own account or for the account of other security holders or both (except with respect to registration statements on Forms S-4, S-8 or another form not available for registering the Restricted Stock for sale to the public), each such time it will give written notice to all holders of outstanding Restricted Stock of its intention so to do. Upon the written request of any such holder, received by the Company within 30 days after the giving of any such notice by the Company, to register any of its Restricted Stock, the Company will use its best efforts to cause the Restricted Stock as to which registration shall have been so requested to be included in the securities to be covered by the registration statement proposed to be filed by the Company, all to the extent requisite to permit the sale or other disposition by the holder of such Restricted Stock so registered. In the event that any registration pursuant to this Section 5 shall be, in whole or in part, an underwritten public offering of Common Stock, the number of shares of Restricted Stock to be included in such an underwriting may be reduced (*pro rata* among the requesting holders based upon the number of shares of Restricted Stock owned by such holders) if and to the extent that the managing underwriter shall be of the opinion that such inclusion would materially adversely affect the marketing of the securities to be sold by the Company therein, *provided, however,* that such number of shares of Restricted Stock shall not be reduced if any shares are to be included in such underwriting for the account of any person other than the Company or requesting holders of Restricted Stock, and *provided, further, however,* that in no event may less than thirty-five percent (35%) of the total number of shares of Common Stock to be included in such underwriting be made available for shares of Restricted Stock unless the managing underwriter shall in good faith advise the holders proposing to distribute their securities through such underwriting that such level of participation would, in its opinion, materially adversely affect the offering price or its ability to complete the offering and shall specify the number of shares of Restricted Stock which, in its opinion, can be included in the registration and underwriting without such an effect.

6. Registration on Form S-3. If at any time (i) (A) a holder or holders of at least ten percent (10%) of the Conversion Shares, or (B) Shire, for so long as Shire plc or any of its Affiliates (as defined in the Purchase Agreement) owns at least fifty percent (50%) of the Preferred Stock (or Conversion Shares issuable upon conversion of such Preferred Stock) it owns as of the date hereof request(s) that the Company file a registration statement on Form S-3 or any successor thereto for a public offering of all or any portion of the shares of Restricted Stock held by such requesting holder or holders, in each case of (A) or (B) above, having an aggregate offering price to the public of at least $500,000, and (ii) the Company is a registrant entitled to use Form S-3 or any successor thereto to register such shares, then the Company shall use its best efforts to register under the Securities Act on Form S-3 or any successor thereto, for public sale in accordance with the method of disposition specified in such notice, the number of shares of Restricted Stock specified in such notice. Whenever the Company is required by this Section 6 to use its best efforts to effect the registration of Restricted Stock, each of the procedures and requirements of Section 4 (including but not limited to the requirement that the Company notify all holders of Restricted Stock from whom notice has not been received and provide them with the opportunity to participate in the offering) shall apply to such registration, *provided, however,* that there shall be no limitation on the number of registrations on Form S-3 which may be requested and obtained under this Section 6, and *provided, further, however,* that the requirements contained in the first sentence of Section 4(a) shall not apply to any registration on Form S-3 which may be requested and obtained under this Section 6. In the event that any registration pursuant to this Section 6 shall be, in whole or in part, an underwritten public offering of Common Stock, the number of shares of Restricted Stock to be included in such an underwriting may be reduced (*pro rata* among the requesting holders based upon the number of shares of Restricted Stock owned by such holders) if and to the extent that the managing underwriter shall be of the opinion that such inclusion would materially adversely affect the marketing of the securities to be sold by the Company therein.

7. Registration Procedures. If and whenever the Company is required by the provisions of Sections 4, 5 or 6 to use its best efforts to effect the registration of any shares of Restricted Stock under the Securities Act, the Company will, as expeditiously as possible:

(a) prepare and file with the Commission a registration statement (which, in the case of an underwritten public offering pursuant to Section 4, shall be on Form S-1 or other form of general applicability satisfactory to the managing underwriter selected as therein provided) with respect to such securities and use its best efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby (determined as hereinafter provided);

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for the period specified in paragraph (a) above and comply with the provisions of the Securities Act with respect to the disposition of all Restricted Stock covered by such registration statement in accordance with the sellers' intended method of disposition set forth in such registration statement for such period;

(c) furnish to each seller of Restricted Stock and to each underwriter such number of copies of the registration statement and the prospectus included therein (including each preliminary prospectus) as such persons reasonably may request in order to facilitate the public sale or other disposition of the Restricted Stock covered by such registration statement;

(d) use its best efforts to register or qualify the Restricted Stock covered by such registration statement under the securities or "blue sky" laws of such jurisdictions as the sellers of Restricted Stock or, in the case of an underwritten public offering, the managing underwriter reasonably shall request, *provided, however,* that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction;

(e) use its best efforts to list the Restricted Stock covered by such registration statement with any securities exchange on which the Common Stock of the Company is then listed;

(f) provide a transfer agent and registrar for all such Restricted Stock, not later than the effective date of such registration statement;

(g) immediately notify each seller of Restricted Stock and each underwriter under such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event of which the Company has knowledge as a result of which the prospectus contained in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(h) if the offering is underwritten and at the request of any seller of Restricted Stock, use its best efforts to furnish on the date that Restricted Stock is delivered to the underwriters for sale pursuant to such registration (i) an opinion dated such date of counsel representing the Company for the purposes of such registration, addressed to the underwriters and to such seller, in form and substance as is customarily given to underwriters and selling stockholders in an underwritten public offering and (ii) a letter dated such date from the independent public accountants retained by the Company, addressed to the underwriters and to such seller, in form and substance as is customarily given to underwriters and selling stockholders in an underwritten public offering;

(i) make available for inspection by each seller of Restricted Stock, any underwriter participating in any distribution pursuant to such registration statement, and any attorney, accountant or other agent retained by such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(j) advise each selling holder of Restricted Stock, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such registration statement or the initiation or threatening of any proceeding for such purpose and promptly use all reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

(k) cooperate with the selling holders of Restricted Stock and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Restricted Stock to be sold, such certificates to be in such denominations and registered in such names as such holders or the managing underwriters may request at least two business days prior to any sale of Restricted Stock; and

(l) permit any holder of Restricted Stock which holder, in the sole and exclusive judgment, exercised in good faith, of such holder, might be deemed to be a controlling person of the Company, to participate in good faith in the preparation of such registration or comparable statement and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such holder and its counsel should be included, subject to review by the Company and its counsel after consultation with such holder.

For purposes of Section 7(a) and 7(b) and of Section 4(c), the period of distribution of Restricted Stock in a firm commitment underwritten public offering shall be deemed to extend until each underwriter has completed the distribution of all securities purchased by it, and the period of distribution of Restricted Stock in any other registration shall be deemed to extend until the earlier of the sale of all Restricted Stock covered thereby and 180 days after the effective date thereof.

In connection with each registration hereunder, the sellers of Restricted Stock will furnish to the Company in writing such information with respect to themselves and the proposed distribution by them as reasonably shall be necessary in order to assure compliance with federal and applicable state securities laws.

In connection with each registration pursuant to Sections 4, 5 or 6 covering an underwritten public offering, the Company and each seller agree to enter into a written agreement with the managing underwriter selected in the manner herein provided in such form and containing such provisions as are customary in the securities business for such an arrangement between such underwriter and companies of the Company's size and investment stature.

8. Expenses. All expenses incurred by the Company in complying with Sections 4, 5 and 6, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including counsel fees) incurred in connection with complying with state securities or "blue sky" laws, fees of the National Association of Securities Dealers, Inc., transfer taxes, fees of transfer agents and registrars, costs of insurance, and fees and disbursements of one counsel for the sellers of Restricted Stock, but excluding any Selling Expenses, are called "Registration Expenses". All underwriting discounts and selling commissions applicable to the sale of Restricted Stock are called "Selling Expenses".

The Company will pay all Registration Expenses in connection with each registration statement under Sections 4, 5 or 6; *provided, however,* if any registration requested pursuant to Sections 4 or 6 is withdrawn at the request of the holders initiating such registration pursuant to Section 4(c) or Section 6, as the case may be, such holders may elect to (i) have the Company pay the Registration Expenses for such withdrawn registration but such withdrawn registration shall count as a completed registration toward the Company's obligation to pay Registration Expenses pursuant to this Section 8 or (ii) pay the Registration Expenses for such withdrawn registration but such withdrawn registration shall not count as a completed registration toward the Company's obligation to pay Registration Expenses under this Section 8; *provided further, however,* if a registration is withdrawn after the holders of Restricted Stock initiating such registration have learned of a material adverse change in the financial condition or prospects of the Company or have learned of other material adverse information relating to the Company (but not material adverse information solely relating to the stock market conditions in general), in either case not known to such holders at the time of their request for such registration, then all Registration Expenses related to such withdrawn registration shall be borne by the Company and such withdrawn registration shall not be counted as a completed registration under for purposes of this Section 8. All Selling Expenses in connection with each registration statement under Sections 4, 5 or 6 shall be borne by the participating sellers in proportion to the number of shares sold by each, or by such participating sellers other than the Company (except to the extent the Company shall be a seller) as they may agree.

9. Indemnification and Contribution.

(a) In the event of a registration of any of the Restricted Stock under the Securities Act pursuant to Sections 4, 5 or 6, the Company will indemnify and hold harmless each seller of such Restricted Stock thereunder, each underwriter of such Restricted Stock thereunder and each other person, if any, who controls such seller or underwriter within the meaning of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which such seller, underwriter or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such Restricted Stock was registered under the Securities Act pursuant to Sections 4, 5 or 6, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each such seller, each such underwriter and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action, *provided, however,* that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by any such seller, any such underwriter or any such controlling person in writing specifically for use in such registration statement or prospectus.

(b) In the event of a registration of any of the Restricted Stock under the Securities Act pursuant to Sections 4, 5 or 6, each seller of such Restricted Stock thereunder, severally and not jointly, will indemnify and hold harmless the Company, each person, if any, who controls the Company within the meaning of the Securities Act, each officer of the Company who signs the registration statement, each director of the Company, each underwriter and each person who controls any underwriter within the meaning of the Securities Act, against all losses, claims, damages or liabilities, joint or several, to which the Company or such officer, director, underwriter or controlling person may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the registration statement under which such Restricted Stock was registered under the Securities Act pursuant to Sections 4, 5 or 6, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company and each such officer, director, underwriter and controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action, *provided, however,* that such seller will be liable hereunder in any such case if and only to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information pertaining to such seller, as such, furnished in writing to the Company by such seller specifically for use in such registration statement or prospectus, and *provided, further, however,* that the liability of each seller hereunder shall be limited to the proportion of any such loss, claim, damage, liability or expense which is equal to the proportion that the public offering price of the shares sold by such seller under such registration statement bears to the total public offering price of all securities sold thereunder, but not in any event to exceed the net proceeds received by such seller from the sale of Restricted Stock covered by such registration statement.

(c) No indemnifying party, in the defense of any such claim or action, shall, except with the consent of each indemnified party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or action, and the indemnification agreements contained in Sections 9(a) and 9(b) shall not apply to any settlement entered into in violation of this sentence. Each indemnified party shall furnish such information regarding itself or the claim in question as an indemnifying party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) Promptly after receipt by an indemnified party hereunder of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party hereunder, notify the indemnifying party in writing thereof, but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to such indemnified party other than under this Section 9 and shall only relieve it from any liability which it may have to such indemnified party under this Section 9 if and to the extent

the indemnifying party is prejudiced by such omission. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in and, to the extent it shall wish, to assume and undertake the defense thereof with counsel reasonably satisfactory to such indemnified party, and, after notice from the indemnifying party to such indemnified party of its election so to assume and undertake the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 9 for any legal expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation and of liaison with counsel so selected, *provided, however,* that, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be reasonable defenses available to it which are different from or additional to those available to the indemnifying party or if the interests of the indemnified party reasonably may be deemed to conflict with the interests of the indemnifying party, the indemnified party shall have the right to select a separate counsel and to assume such legal defenses and otherwise to participate in the defense of such action, with the expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the indemnifying party as incurred.

(e) In order to provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) any holder of Restricted Stock exercising rights under this Agreement, or any controlling person of any such holder, makes a claim for indemnification pursuant to this Section 9 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 9 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any such selling holder or any such controlling person in circumstances for which indemnification is provided under this Section 9; then, and in each such case, the Company and such holder will contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in such proportion so that such holder is responsible for the portion represented by the percentage that the public offering price of its Restricted Stock offered by the registration statement bears to the public offering price of all securities offered by such registration statement, and the Company is responsible for the remaining portion; *provided, however,* that, in any such case, (A) no such holder will be required to contribute any amount in excess of the public offering price of all such Restricted Stock offered by it pursuant to such registration statement; and (B) no person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

10. Changes in Common Stock or Preferred Stock. If, and as often as, there is any change in the Common Stock or the Preferred Stock by way of a stock split, stock dividend, combination or reclassification, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment shall be made in the provisions hereof so that the rights and privileges granted hereby shall continue with respect to the Common Stock and the Preferred Stock as so changed.

11. Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of the Restricted Stock to the public without registration, at all times after 90 days after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act;

(b) use its best efforts to file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to each holder of Restricted Stock forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of such Rule 144 and of the Securities Act and the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as such holder may reasonably request in availing itself of any rule or regulation of the Commission allowing such holder to sell any Restricted Stock without registration.

12. Right of First Refusal.

(a) Right of First Refusal. The Company shall not issue, sell or exchange, agree or obligate itself to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, any (i) shares of Common Stock, (ii) any other equity security of the Company, including without limitation, Preferred Stock, (iii) any debt security of the Company (other than debt with no equity feature) including without limitation, any debt security which by its terms is convertible into or exchangeable for any equity security of the Company, (iv) any security of the Company that is a combination of debt and equity, or (v) any option, warrant or other right to subscribe for, purchase or otherwise acquire any such equity security or any such debt security of the Company, unless in each case the Company shall have first offered to sell such securities (the "Offered Securities") to the Investors (each an "Offeree" and collectively, the "Offerees") as follows: Each Offeree shall have the right to purchase (x) that portion of the Offered Securities as the number of shares of Restricted Stock then held by such Offeree bears to total number of shares of capital stock of the Company then issued and outstanding (calculated on an as-converted basis with respect to any convertible securities) (the "Basic Amount"), and (y) such additional portion of the Offered Securities as such Offeree shall indicate it will purchase should the other Offerees subscribe for less than their Basic Amounts (the "Undersubscription Amount"), at a price and on such other terms as shall have been specified by the Company in writing delivered to such Offeree (the "Offer"), which Offer by its terms shall remain open and irrevocable for a period of thirty (30) days from receipt of the offer. Each Offeree shall have the right to transfer its right to purchase Offered Securities or part thereof to any person (i) who is an Investor, (ii) who is an "affiliated person," as that term is defined in the Investment Company Act of 1940, of an Investor, (iii) who is a partner or member of an Investor, or (iv) who acquires at least twenty-five (25%) of the shares held by such Investor.

(b) Notice of Acceptance. Notice of each Offeree's intention to accept, in whole or in part, any Offer made pursuant to Section 12(a) shall be evidenced by a writing signed by such Offeree and delivered to the Company prior to the end of the 30-day period of such offer, setting forth such of the Offeree's Basic Amount as such Offeree elects to purchase and, if such Offeree shall elect to purchase all of its Basic Amount, such Undersubscription Amount as such Offeree shall elect to purchase (the "Notice of Acceptance"). If the Basic Amounts subscribed for by all Offerees are less than the total Offered Securities, then each Offeree who has set forth Undersubscription Amounts in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, all Undersubscription Amounts it has subscribed for; *provided, however,* that should the Undersubscription Amounts subscribed for exceed the difference between the Offered Securities and the Basic Amounts subscribed for (the "Available Undersubscription Amount"), each Offeree who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Undersubscription Amount subscribed for by such Offeree bears to the total Undersubscription Amounts subscribed for by all Offerees, subject to rounding by the Board of Directors to the extent it reasonably deems necessary.

(c) Conditions to Acceptances and Purchase.

(i) Permitted Sales of Refused Securities. In the event that Notices of Acceptance are not given by the Offerees in respect of all the Offered Securities, the Company shall have sixty (60) days from the expiration of the period set forth in Section 12(a) to close the sale of all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Offerees (the "Refused Securities") to the Person or Persons specified in the Offer, but only for cash and otherwise in all respects upon terms and conditions, including, without limitation, unit price and interest rates, which are no more favorable, in the aggregate, to such other Person or Persons or less favorable to the Company than those set forth in the Offer.

(ii) Reduction in Amount of Offered Securities. In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 12(c)(i) above), then each Offeree may, at its sole option and in its sole discretion, reduce the number of, or other units of the Offered Securities specified in its respective Notices of Acceptance to an amount which shall be not less than the amount of the Offered Securities which the Offeree elected to purchase pursuant to Section 12(b) multiplied by a fraction, (i) the numerator of which shall be the amount of Offered Securities which the Company actually proposes to sell, and (ii) the denominator of which shall be the amount of all Offered Securities. In the event that any Offeree so elects to reduce the number or amount of Offered Securities specified in its respective Notices of Acceptance, the Company may not sell or otherwise dispose of more than the reduced amount of the Offered Securities until such securities have again been offered to the Offerees in accordance with Section 12(a).

(iii) Closing. Upon the closing, which shall include full payment to the Company, of the sale to such other Person or Persons of all or less than all the Refused Securities, the Offerees shall purchase from the Company, and the Company shall sell to the Offerees, the number of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 12(c)(ii) if the Offerees have so elected, upon the terms and conditions

specified in the Offer. The purchase by the Offerees of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and the Offerees of a purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to the Offerees and their respective counsel.

(d) Further Sale. In each case, any Offered Securities not purchased by the Offerees or other Person or Persons in accordance with Section 12(c) may not be sold or otherwise disposed of until they are again offered to the Offerees under the procedures specified in Sections 12(a), 12(b) and 12(c).

(e) Termination of Right of First Refusal. The rights of the Offerees under this Section 12 shall terminate immediately prior to, but subject to, the consummation of a Qualified Public Offering; *provided, however,* that the rights of the Investors pursuant to this Section 12 may be waived as to all of such Investors by the affirmative vote or written consent of holders of at least seventy-five percent (75%) in interest of the then outstanding Restricted Stock, and any such waiver shall be binding on all Investors, even if any of such Investors do not execute such waiver and irrespective of whether one or more Investors participates in the purchase of the Offered Securities.

(f) Exception. The rights of the Investors under this Section 12 shall not apply to:

(i) Common Stock issued or issuable upon conversion of the Preferred Stock;

(ii) Common Stock or Preferred Stock issued or issuable as a stock dividend to holders of Preferred Stock or upon any subdivision or combination of shares of Stock provided that such stock dividend or subdivision are limited to additional shares of Common Stock;

(iii) any Reserved Employee Shares or options for any Reserved Employee Shares;

(iv) any securities issued pursuant to the acquisition of another entity by the Company by merger, consolidation, reorganization or similar transaction (whereby the Company owns no less than a majority of the voting power of such corporation) or purchase of substantially all of such entity's stock or assets, if such acquisition is previously approved by the Board of Directors;

(v) securities issued or issuable to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors;

(vi) securities issued or issuable to strategic suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors;

(vii) securities issued or issuable in connection with sponsored research, collaboration, technology license, development, marketing or other similar agreements or strategic partnerships approved by the Board of Directors; or

(viii) securities issued in connection with a Qualified Public Offering.

13. Covenants of the Company.

(a) Affirmative Covenants of the Company Other Than Reporting Requirements. Without limiting any other covenants and provisions hereof, and except to the extent the following covenants and provisions of this Section 13(a) are waived in any instance by the holders of seventy-five percent (75%) in interest of the holders of Preferred Stock, the Company covenants and agrees that until the consummation of a Qualified Public Offering it will perform and observe the following covenants and provisions, and will cause each Subsidiary, if and when such Subsidiary exists, to perform and observe such of the following covenants and provisions as are applicable to such Subsidiary:

(i) Payment of Taxes and Trade Debt. Pay and discharge, and cause each Subsidiary to pay and discharge, all taxes, assessments and governmental charges or levies imposed upon it or upon its income, profits or business, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any properties of the Company or any Subsidiary; *provided, however,* that neither the Company nor any Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by appropriate proceedings if the Company or any Subsidiary shall have set aside on its books sufficient reserves, if any, with respect thereto. Pay and cause each Subsidiary to pay, when due, or in conformity with customary trade terms, all lease obligations, all trade debt, and all other Indebtedness incident to the operations of the Company or its Subsidiaries, except such as are being contested in good faith and by proper proceedings if the Company or Subsidiary concerned shall have set aside on its books sufficient reserves, if any, with respect thereto.

(ii) Maintenance of Insurance. Except with the prior approval of the Board of Directors, maintain, and cause each Subsidiary to maintain, insurance, including directors and officers liability insurance, with a total policy limits in such amounts as are approved by the Board of Directors, with responsible and reputable insurance companies or associations in such amounts and covering such risks as is customarily carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Subsidiary operates, but in any event in amounts sufficient to prevent the Company or Subsidiary from becoming a co-insurer.

(iii) Preservation of Corporate Existence. Preserve and maintain, and, unless the Company deems it not to be in its best interests, cause each Subsidiary to preserve and maintain, its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified, and cause each Subsidiary to qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is necessary or desirable in view of its business and operations or the ownership or lease of its properties.

Secure, preserve and maintain, and cause each Subsidiary to secure, preserve and maintain, all licenses and other rights to use Intellectual Property Rights owned or possessed by it and deemed by the Company to be necessary to the conduct of its business and the businesses of its Subsidiaries, taken as a whole.

(iv) Compliance with Laws, Charter and By-Laws. Comply, and cause each Subsidiary to comply, with the requirements of (A) all applicable laws, rules, regulations and orders of any governmental authority, where noncompliance would have a Material Adverse Effect (as defined in the Purchase Agreement), (B) its certificate of incorporation and (C) its by-laws.

(v) Inspection. Permit, upon reasonable request and notice, each of the Investors or any agents or representatives thereof, to examine and make copies of and extracts from the books of account of, and visit and inspect the properties of the Company and any Subsidiary, to discuss the affairs, finances and accounts of the Company and any Subsidiary with any of its officers, directors or Key Employees and independent accountants, and consult with and advise such officers, directors and Key Employees as to their affairs, finances and accounts, all at reasonable times during normal business hours.

(vi) Keeping of Records and Books of Account. Keep, and cause each Subsidiary to keep, adequate records and books of account in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of the Company and any Subsidiary, and in which, for each fiscal year, all proper reserves for depreciation, depletion, returns of merchandise, obsolescence, amortization, taxes, bad debts and other purposes in connection with its business shall be made.

(vii) Maintenance of Properties. Maintain and preserve, and cause each Subsidiary to maintain and preserve, all of its properties and assets, necessary for the proper conduct of its business, in good repair, working order and condition, ordinary wear and tear excepted.

(viii) Budgets Approval. Not later than 30 days prior to the commencement of each fiscal year, prepare and submit to, and obtain the approval by the Board of Directors of, a business plan and monthly operating budgets in detail for the upcoming fiscal year, including capital and operating expense budgets, cash flow projections and profit and loss projections, all itemized in reasonable detail (including itemization of provisions for officers' compensation). Review the budget and business plan periodically, and resubmit all changes therein and all material deviations therefrom to the Board of Directors. The Company shall not enter into any activity not in the ordinary course of business and not envisioned by the budget and business plan, unless approved by the Board of Directors.

(ix) Compliance with ERISA. Comply, and cause each Subsidiary to comply, with all minimum funding requirements applicable to any pension, employee benefit plans or employee contribution plans which are subject to ERISA or to the Code or any similar foreign laws, and comply, and cause each Subsidiary to comply, in all other material respects with the provisions of ERISA and the Code and any similar foreign laws, and the rules and

regulations thereunder, which are applicable to any such plan. The Company shall not permit any event or condition to exist which could permit any such plan to be terminated under circumstances which would cause the lien provided for in Section 4068 of ERISA or any similar foreign laws to attach to the assets of the Company or any Subsidiary.

(x) Financings. Inform the Board of Directors of any negotiations, offers or contracts relating to possible financings of any nature for the Company, whether initiated by the Company or any other Person, except for (A) arrangements with trade creditors, and (B) utilization by the Company or any Subsidiary of commercial lending arrangements with financial institutions.

(xi) Price of Stock. Issue equity securities of the Company that have a price per share at least equal to or greater than the then fair market value of such equity securities as reasonably determined by the Board of Directors; provided, however, that an issuance shall be deemed to be for fair market value if (a) it involves a potential purchaser that is not a stockholder of the Company (or an affiliate thereof) at the time of such issuance and (b) immediately after such issuance, such purchaser's equity ownership of the Company (calculated on a fully diluted basis) shall exceed five percent (5%).

(xii) By-Laws. At all times, cause the by-laws of the Company to provide that, unless otherwise required by the laws of the State of Delaware, (i) any two (2) directors and (ii) any holder or holders of at least twenty-five percent (25%) of the outstanding Preferred Stock, shall have the right to call a meeting of the Board of Directors or stockholders. At all times maintain provisions in the by-laws or certificate of incorporation of the Company indemnifying all directors against liability to the maximum extent permitted under the laws of State of Delaware.

(xiii) Nondisclosure and Developments Agreements; New Developments. The Company will obtain a duly executed Nondisclosure and Developments Agreement from each officer, Key Employee, employee and consultant of the Company or any Subsidiary in a form approved by the Board of Directors in favor of the Company or any Subsidiary. Where reasonably practicable, (A) cause all technological developments, patentable or unpatentable inventions, discoveries or improvements by the Company's or any Subsidiary's officers or employees to be documented in accordance with the appropriate professional standards, and (B) where possible and deemed by management to be commercially appropriate based on the advice of legal counsel and other considerations, file and prosecute U.S. and foreign patent or copyright applications relating to and protecting such developments on behalf of the Company or any Subsidiary.

(xiv) Meetings of Directors. Hold meetings of the Company's Board of Directors not less than four times a year on a quarterly basis.

(xv) Expenses of Directors. Promptly reimburse in full, each director of the Company who is not an employee of the Company for all of his reasonable out-of-pocket expenses incurred in attending each meeting of the Board of Directors of the Company or any committee thereof.

(xvi) Continued Business Operations. Use commercially reasonable efforts to cause its officers and Key Employees to refrain from carrying on any for profit business activity outside of the Company.

(xvii) Stock Option Plans. Any stock option or stock purchase agreement involving employees, directors, Key Employees or consultants of the Company granted or approved by the Company from time to time after the date hereof shall provide that each option granted or restricted stock purchased thereunder shall vest (a) with respect to twenty-five percent (25%) of the shares subject to such grant or purchase, one (1) year after the date of such grant or purchase and (b) with respect to the remaining seventy-five percent (75%) of the shares subject to such grant or purchase, pro rata on a quarterly basis thereafter except with the prior approval of the Compensation Committee of the Board of Directors. No stock option agreement or stock purchase agreement entered into on or after the date hereof shall provide for acceleration in the vesting schedule of unexercised options or restricted stock subject to restrictions in the event of a change of control of the Company, except with the prior approval of the Board of Directors. Each form of stock option agreement or stock purchase agreement shall be subject to the approval of the Compensation Committee of the Board of Directors and shall contain a right of first refusal on transfers of shares in favor of the Company. In addition, each employee, director, Key Employee or consultant of the Company who acquires any issued and outstanding shares of the capital stock of the Company or securities of the Company exercisable or convertible into such number of shares of capital stock of the Company, shall be required to execute an Instrument of Accession to that Stock Restriction Agreement dated as of the date hereof by and among the Company, the Investors and the Holders listed therein and the Stockholders' Voting Agreement dated as of the date hereof by and among the Company, the Investors and the Holders listed therein.

(xviii) U.S. Real Property Interest Statement. Provide prompt written notice to each Investor following any "determination date" (as defined in United States Treasury Regulation Section 1.897-2(c)(1)) on which the Company becomes a United States real property holding corporation. In addition, upon a written request by any Investor, the Company shall provide such Investor with a written statement informing the Investor whether such Investor's interest in the Company constitutes a U.S. real property interest. The Company's determination shall comply with the requirements of United States Treasury Regulation Section 1.897-2(h)(1) or any successor regulation, and the Company shall provide timely notice to the Internal Revenue Service, in accordance with and to the extent required by United States Treasury Regulation Section 1.897-2(h)(2) or any successor regulation, that such statement has been made. The Company's written statement to any Investor shall be delivered to such Investor within ten (10) days of such Investor's written request therefor. The Company's obligation to furnish a written statement pursuant to this Section 12(a)(xvii) shall continue notwithstanding the fact that a class of the Company's stock may be traded on an established securities market.

(xix) Qualified Small Business Stock. Upon request, submit to its stockholders (including the Investors) and to the Internal Revenue Service any reports that may be required under Section 1202(d)(l)(C) of the Code and any related Treasury Regulations. In addition, within ten (10) days after any Investor has delivered to the Company a written request therefor, the Company shall deliver to such Investor a written statement informing the Investor

whether such Investor's interest in the Company constitutes "qualified small business stock" as defined in Section 1202(c) of the Code. The Company's obligation to furnish a written statement pursuant to this Section 12(a)(xviii) shall continue notwithstanding the fact that a class of the Company's stock may be traded on an established securities market.

(b) Negative Covenants of the Company. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that, until the consummation of a Qualified Public Offering or, while this Agreement remains outstanding, it will comply with and observe the following covenants and provisions, and will cause each Subsidiary, if and when such Subsidiary exists, to comply with and observe such of the following covenants and provisions as are applicable to such Subsidiary, and will not, without the written consent or waiver of seventy-five percent (75%) in interest of the holders of Preferred Stock:

(i) Restrictions on Indebtedness. Create, or authorize the creation of, or issue, or authorize the issuance of, any debt security of the Company which by its terms is convertible into or exchangeable for any equity security of the Company, including without limitation any security of the Company which is a combination of debt and equity; or create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any liability with respect to Indebtedness for money borrowed which (a) exceeds, in the aggregate, $500,000; and (b) is not convertible into or exchangeable for any equity securities of the Company or is not a security that is a combination of debt and equity, unless such Indebtedness has been approved by the Board of Directors.

(ii) Merger or Sale. Except as contemplated by this Agreement and subject to the terms of the Preferred Stock, merge with or into any other entity (except a Subsidiary or merger in which the Company is the surviving Company and the holders of Company voting stock outstanding immediately prior to the transaction constitute a majority of the holders of voting stock outstanding immediately following the transaction), sell to any person or entity any assets constituting all or substantially all of the assets of the Company, or agree to do or permit any Subsidiary to do any of the foregoing.

(iii) Assumptions or Guaranties of Indebtedness of Other Persons. Assume, guarantee, endorse or otherwise become directly or contingently liable on, or permit any Subsidiary to assume, guarantee, endorse or otherwise become directly or contingently liable on (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) any Indebtedness of any other Person, except for guaranties by endorsement of negotiable instruments for deposit or collection in the ordinary course of business, and except for the guaranties of the permitted obligations of any wholly-owned Subsidiary unless such guarantee, endorsement or liability is previously approved by the Board of Directors.

(iv) Distributions. Purchase or redeem any shares of capital stock other than the Preferred Stock as expressly provided in the Company's certificate of incorporation, as amended, or permit any Subsidiary of the Company to take any such action, except for dividends or other distributions payable on the Common Stock of the Company, solely in the form of

additional shares of Common Stock and other than securities repurchased from former employees, officers, directors, consultants or other persons who performed services for the Company or any Subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then current fair market value thereof.

(v) Change in Nature of Business. Make or permit any Subsidiary to make, any material change in the nature of its business as contemplated in written materials delivered to the Investors prior to the date hereof.

(vi) Ownership of Subsidiaries. Purchase or hold beneficially any stock, other securities or evidences of Indebtedness in, or make any investment in any other Person, excluding a wholly-owned Subsidiary of the Company, if the aggregate financial commitment of the Company related to all such commitments involves more than $10,000 in any 12-month period, unless such purchase, ownership or investment is made pursuant to operating and/or capital plans previously approved by the Board of Directors.

(vii) Issuance of Reserved Employee Shares. Grant to any of its employees options or other rights to purchase Reserved Employee Shares unless authorized by the Board of Directors of the Company or its Compensation Committee.

(viii) Dealings with Affiliates and Others. Other than (A) as contemplated by this Agreement or (B) transactions in the ordinary course of business (such as reimbursement of business expenses) on customary terms applicable to all employees related to employment, enter into, after the date of this Agreement, any transaction, including, without limitation, any loans or extensions of credit or royalty agreements, with any officer, director or affiliate of the Company or any Subsidiary or any member of their respective immediate families or any corporation or other entity directly or indirectly affiliated with one or more of such officers, directors or members of their immediate families unless such transaction is approved in advance by a majority of the disinterested members of the Board of Directors; *provided, however,* that the restrictions of this Section shall not apply to any issuance and sale of future equity or debt securities of the Company to any of the Investors (or their respective affiliates);

(ix) Maintenance of Ownership of Subsidiaries. Sell or otherwise dispose of any shares of capital stock of any Subsidiary, except to another Subsidiary, or permit any Subsidiary to issue, sell or otherwise dispose of any shares of its capital stock or the capital stock of any Subsidiary, except to the Company or another Subsidiary; *provided, however,* that the Company may liquidate, merge or consolidate any Subsidiary or Subsidiaries into or with itself, provided that the Company is the surviving entity, or into or with another Subsidiary or Subsidiaries.

(x) Acquisition or Disposition of Assets. Acquire or dispose of any assets of $500,000 in value (other than by way of granting in the ordinary course of business and on arms-length terms a license to use intellectual property or products of the Company), unless such acquisition or disposition is made pursuant to operating and/or capital plans previously approved by the Board of Directors.

(xi) Capital Expenditures. Enter into any contract, arrangement or commitment involving expenditure on capital account other than in accordance with, or not more than $500,000 in excess of, the Company's aggregate annual capital expenditure budget, unless such expenditure is made pursuant to operating and/or capital plans previously approved by the Board of Directors. For the purposes of this paragraph, the aggregate amount payable under any agreement for hire, hire purchase or purchase on credit sale or conditional sale terms shall be deemed to be capital expenditure incurred in the year in which such agreement is executed by the parties thereto.

(xii) Transfers of Technology. Transfer any ownership or interest in, or material rights relating to, any of its Intellectual Property Rights to any Person or entity which is not a member of the consolidated group of the Company and its Subsidiaries; *provided, however,* that this Section 13(b)(xii) shall not apply to transfers of Intellectual Property Rights accomplished in the ordinary course of business.

(c) Reporting Requirements. For so long as an Investor holds shares of Preferred Stock, Conversion Shares or Restricted Stock and until the consummation of a Qualified Public Offering, the Company will furnish the following to such Investor:

(i) Monthly Reports: as soon as available and in any event within 30 days after the end of each calendar month, unaudited financial statements of the Company and its Subsidiaries as of the end of such month and statements of income and retained earnings of the Company and its Subsidiaries for such month and for the period commencing at the end of the previous fiscal year and ending with the end of such month, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year, and including comparisons to monthly budgets, a cash flow analysis for such month, a schedule showing each expenditure of a capital nature during such month;

(ii) Quarterly Reports: to the extent not otherwise provided to any Person, as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, financial statements of the Company and its Subsidiaries as of the end of such quarter and statements of income and cash flows of the Company and its Subsidiaries for such quarter and for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year, and including comparisons to quarterly budgets and a summary discussion of the Company's principal functional areas, all in reasonable detail and duly certified by the chief financial officer of the Company as having been prepared in accordance with generally accepted accounting principles consistently applied (subject to year-end audit adjustments);

(iii) Annual Reports: as soon as available and in any event within 90 days after the end of each fiscal year of the Company, a copy of the annual audit report for such year for the Company and its Subsidiaries, including therein consolidated balance sheets of the Company and its Subsidiaries as of the end of such fiscal year and consolidated statements of income and of the Company and its Subsidiaries for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, all such consolidated

statements to be duly certified by the chief financial officer of the Company and by such independent public accountants of recognized national standing approved by a majority of the Board of Directors;

(iv) Budgets: as soon as available after approval by the Board of Directors and in any event within 30 days after the end of each year at the Company, a business plan and monthly operating budgets for the forthcoming fiscal year;

(v) Notice of Adverse Changes: promptly after the occurrence thereof and in any event within 10 days after each occurrence, notice of any Material Adverse Change in the operations or financial condition of the Company or any material default in any other material agreement to which the Company is a party;

(vi) Written Reports: promptly upon receipt or publication thereof, any written reports submitted to the Company by independent public accountants in connection with an annual or interim audit of the books of the Company and its Subsidiaries made by such accountants or by consultants or other experts in connection with such consultant's or other expert's review of the Company's operations or industry, and written reports prepared by the Company to comply with other investment or loan agreements;

(vii) Notice of Proceedings: promptly after the commencement thereof, notice of all actions, suits, litigations and proceedings pending or, to the knowledge of the Company, threatened against the Company affecting any of its respective properties or assets, or against any officer, director, Key Employee or holder of more than 5% of the capital stock of the Company relating to such person's performance of duties for the Company or relating to his stock ownership in the Company or otherwise relating to the business of the Company including, without limiting their generality, actions pending or, to the knowledge of the Company, threatened involving the prior employment of any of the Company's officers or employees in their use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employees, or any event or condition on the basis of which such litigation, proceeding or investigation might properly be instituted before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Company or any Subsidiary;

(viii) Stockholders' and SEC Reports: promptly upon sending, making available, or filing the same, such reports and financial statements as the Company or any Subsidiary shall send or make available to the stockholders of the Company or file with the Securities and Exchange Commission; and

(ix) Other Information: such other information respecting the business, properties or the condition or operations, financial or other, of the Company or any of its Subsidiaries as any such Investor may from time to time reasonably request.

The holders of Preferred Stock hereby covenant and agree that, subject to the disclosure of information (i) of a non-technical nature, including financial information, which such holder discloses to its partners and/or shareholders generally, (ii) which such holder discloses to such

holder's counsel or accountant, or (iii) which such holder discloses to an officer, director or partner of such holder, provided that such holder shall inform the recipient of the confidential nature of such information, and shall instruct the recipient to treat the information as confidential, all of the information disclosed to such holders pursuant to the provisions of this Section 13(c) will be kept confidential and such holder will not disclose or divulge any confidential, proprietary or secret information which such holder may obtain from the Company pursuant to this Section 13(c) unless (a) such information is or becomes known to such holder from a source other than the Company or is or becomes publicly known (other than as a result of a breach by such holder of this provision), (b) the holder is required by law, court order or a governmental agency to disclose such information, or (c) unless the Company gives its written consent to such holder's release of such information.

14. Representations and Warranties of the Company. The Company represents and warrants to you as follows:

(a) The execution, delivery and performance of this Agreement by the Company have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, the Charter or By-laws of the Company or any provision of any indenture, agreement or other instrument to which it or any or its properties or assets is bound, conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

(b) This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.

15. Miscellaneous

(a) All covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto (including without limitation transferees of any Preferred Stock or Restricted Stock), whether so expressed or not, *provided, however,* that registration rights conferred herein on the holders of Preferred Stock, Conversion Shares or Restricted Stock shall only inure to the benefit of a transferee of Preferred Stock, Conversion Shares or Restricted Stock if (i) there is transferred to such transferee, in accordance with the provisions of the Stock Restriction Agreement (as defined in the Purchase Agreement) (including, without limitation, Section 4(d) thereof), in the aggregate, at least twenty-five percent (25%) of the shares of Preferred Stock, Conversion Shares or Restricted Stock, as the case may be, then held by such transferor or (ii) such transferee is a partner, member, stockholder or Affiliate (as defined in the Purchase Agreement) of a party hereto.

(b) All notices and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or three (3) days after mailing by first class, registered or certified mail (air mail if to or from outside the United States), return receipt

requested, postage prepaid, if to an Investor at its respective address set forth on Schedule of Holders hereto or to such other address as the addressee shall have furnished to the other parties hereto in the manner prescribed by this Section 15(b) or if to any subsequent holder of Preferred Stock, Conversion Shares or Restricted Stock, to it at such address as may have been furnished to the Company in writing by such holder.

(c) This Agreement shall be construed and enforced in accordance with and governed by the internal laws of the State of Delaware, without regard to its principles of conflicts of laws.

(d) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Company and Investors holding at least a majority in interest of the outstanding Conversion Shares; provided, however, that (i) no such amendment or waiver that would (A) increase the obligations of any Investor under this Agreement or (B) adversely affect the rights of, or impose any additional obligation on, any Investor under this Agreement, in each case in a manner which is not the same as or similar in all material respects to the manner in which the other Investors would be affected shall be effective without the prior written consent of that Investor, and (ii) no such amendment or waiver to this Section 15(d) that is for the benefit of one or more Investors but not for all of the Investors or that would be more favorable to one or more Investors shall be effective without the prior written consent of holders of at least a majority in interest of the outstanding Conversion Shares held by the disinterested or less favored Investors, as the case may be. The Company shall deliver copies of such consent in writing to any holders of any Shares who did not execute such consent. Any waiver or consent may be given subject to satisfaction of conditions stated therein and any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(e) This Agreement may be executed and delivered (including by facsimile transmission) in more than one counterpart, each of which shall be deemed to be an original and which, together, shall constitute one and the same instrument.

(f) The obligations of the Company to register shares of Restricted Stock under Sections 4, 5 or 6 shall terminate on the fifth anniversary of the date of a Qualified Public Offering.

(g) If requested in writing by the underwriters for the initial underwritten public offering of securities of the Company, each holder of Restricted Stock who is a party to this Agreement shall agree not to sell publicly any shares of Restricted Stock or any other shares of Common Stock (other than shares of Restricted Stock or other shares of Common Stock being registered in such offering), without the consent of such underwriters, for a period not to exceed 180 days following the effective date of the registration statement relating to such offering; *provided, however,* that all persons entitled to registration rights with respect to shares of Common Stock who are not parties to this Agreement, all other persons selling shares of Common Stock in such offering, all persons holding in excess of 1% of the capital stock of the Company on a fully diluted basis and all executive officers and directors of the Company shall also have agreed not to sell publicly their Common Stock under the circumstances and pursuant

to the terms set forth in this Section 15(g); and *provided, further, however,* that any such lock-up agreement shall provide that if the managing underwriter releases any shares from the lock-up with respect to such offering prior to the scheduled expiration date, the managing underwriter shall contemporaneously release a *pro rata* portion of the Restricted Stock from such lock-up.

(h) Notwithstanding the provisions of Section 7(a), the Company's obligation to file a registration statement, or cause such registration statement to become and remain effective, shall be suspended for a period not to exceed 30 days from the date of the request by a holder of Restricted Stock, such right to delay a request to be exercised by the Company not more than once in any 12 month period, if there exists at the time material non-public information relating to the Company which, in the good faith determination of the Company's Board of Directors, should not be disclosed.

(i) The Company shall not grant to any third party any registration rights so long as any of the registration rights under this Agreement remains in effect, *provided, however,* that the Company may grant registration rights under Sections 4, 5 and 6 hereof and information rights under Section 13(c) hereof upon receipt of prior written consent of holders of at least seventy-five percent (75%) in interest of the outstanding Conversion Shares issued or issuable upon conversion of the Preferred Stock.

(j) The provisions of this Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; but this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

(k) All shares of Restricted Stock and Preferred Stock held or acquired by affiliates of Investors shall be aggregated together for purposes of determining availability of any rights under this Agreement.

(l) Article, Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Investor Rights Agreement under seal as of the date first above written.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

[Signature Page to Investor Rights Agreement]

INVESTORS:

NEW ENTERPRISE ASSOCIATES 11, LIMITED PARTNERSHIP

By: NEA Partners 11, Limited Partnership, its general partner
By: NEA 11 GP, LLC, its general partner

By: /s/ Eugene A. Tramor, III, Manager

NEA VENTURES 2005, LIMITED PARTNERSHIP

By: /s/ Pamela J. Clark, Vice President

[Signature Page to Investor Rights Agreement]

INVESTORS:

CADUCEUS PRIVATE INVESTMENTS II, LP

By: OrbiMed Capital II LLC
Its: General Partner

By: /s/ Michael Sheffery
Name: Michael Sheffery
Title: General Partner

CADUCEUS PRIVATE INVESTMENTS (QP) II, LP

By: OrbiMed Capital II LLC
Its: General Partner

By: /s/ Michael Sheffery
Name: Michael Sheffery
Title: General Partner

UBS JUNIPER CROSSOVER FUND, L.L.C.

By: OrbiMed Advisors LLC
Its: Member

By: /s/ Michael Sheffery
Name: Michael Sheffery
Title: General Partner

INVESTORS:

SHIRE LABORATORIES INC.

By: /s/ Scott Applebaum

Name: Scott Applebaum
Title: Secretary

[Signature Page to Investor Rights Agreement]

SCHEDULE OF INVESTORS

Investors

New Enterprise Associates 11, Limited Partnership
1119 St. Paul Street
Baltimore, MD 21202

NEA Ventures 2005, Limited Partnership
1119 St. Paul Street
Baltimore, MD 21202

Caduceus Private Investments II, LP
c/o OrbiMed Advisors LLC
767 Third Avenue, 30th Floor
New York, NY 10017
Attn: Michael B. Sheffery

Caduceus Private Investments II (QP), LP
c/o OrbiMed Advisors LLC
767 Third Avenue, 30th Floor
New York, NY 10017
Attn: Michael B. Sheffery

UBS Juniper Crossover Fund, LLC
c/o OrbiMed Advisors LLC
767 Third Avenue, 30th Floor
New York, NY 10017
Attn: Michael B. Sheffery

Shire Laboratories Inc.
c/o 11200 Gundry Lane
Owings Mills, Maryland 21117
Attention: Richard Couch

Schedule I

SUPERNUS PHARMACEUTICALS, INC.
INSTRUMENT OF ACCESSION

The undersigned, , in order to become the owner or holder of shares of the capital stock of Supernus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), hereby agrees to become a party to the Investor Rights Agreement (the "Agreement") dated as of December 22, 2005, among the Company and the other parties thereto, and to be bound by all provisions thereof. The undersigned agrees to become an Investor (as defined in the Agreement) under the terms of the Agreement. This Instrument of Accession shall take effect and shall become a part of said Agreement immediately upon execution by the undersigned hereto and acceptance thereof by the Company.

EXECUTED as a contract under seal as of the date set forth below:

Signature: _____

Name: _____

By: _____

Address: _____

_____

_____

Social Security No.: _____

Date: _____

ACCEPTED:

SUPERNUS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

Date: _____

AMENDMENT NO. 1 TO
INVESTOR RIGHTS AGREEMENT

This AMENDMENT NO. 1 TO INVESTOR RIGHTS AGREEMENT (this "Amendment") is made as of February 3, 2006, by and among Supernus Pharmaceuticals, Inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), and the holders (the "Investors") of shares of Series A Convertible Preferred Stock, par value $0.001 per share (the "Series A Preferred Stock") listed on the Schedule of Investors attached to the Investor Rights Agreement (as defined below). Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Investor Rights Agreement (as defined below).

WHEREAS, pursuant to the terms of the Series A Convertible Preferred Stock Agreement by and among the Company and the Investors dated as of December 22, 2005, as amended by Amendment No. 1 dated as of the date hereof (collectively, the "Purchase Agreement"), the Company proposes to issue and sell to certain existing and new investors an aggregate of Seventeen Million Five Hundred Thousand (17,500,000) shares of Series A Preferred Stock at the Second Closing (as defined in the Purchase Agreement);

WHEREAS, the parties hereto desire to amend the Investor Rights Agreement dated as of December 22, 2005 (the "Investor Rights Agreement"), by and among the Company and the Investors;

WHEREAS, pursuant to Section 15(d) of the Investor Rights Agreement, the written consent of the Company and holders of at least a majority of the then outstanding Conversion Shares is required to amend the Investor Rights Agreement;

WHEREAS, the undersigned Investors represent the holders of at least a majority of the outstanding Conversion Shares; and

WHEREAS, it is a condition precedent to the Second Closing of the purchase of Series A Preferred Stock pursuant to the Purchase Agreement that this Amendment be entered into by the parties hereto.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The second sentence of Section 3 of the Investor Rights Agreement shall be amended and restated in its entirety to read as follows:

"Each such notice shall describe the manner of the proposed transfer and, if requested by the Company, shall be accompanied by an opinion of counsel satisfactory to the Company (it being agreed that Schmeltzer, Aptaker & Shepard, PC shall be satisfactory) to the effect that the proposed transfer may be effected without registration under the Securities Act and any applicable state securities laws, whereupon the holder of such stock shall be

entitled to transfer such stock in accordance with the terms of its notice; *provided, however,* that no such opinion of counsel shall be required for a transfer to one or more partners or members of the transferor (in the case of a transferor that is a partnership or a limited liability company, respectively), or to any other investment fund managed or advised by the same manager or adviser as a transferor, or to an affiliated business entity (in the case of a transferor that is a corporation); *provided, further, however,* that any transferee other than a transferee receiving such shares for no consideration shall execute and deliver to the Company a representation letter in form reasonably satisfactory to the Company's counsel to the effect that the transferee is acquiring such shares for its own account, for investment purposes and without any view to distribution thereof."

2. Section 4(d) of the Investor Rights Agreement shall be amended and restated in its entirety to read as follows:

"(d) In connection with any underwritten public offering pursuant to this Section 4 or Section 6, holders of two-thirds (66 2/3%) in interest of the outstanding shares of Restricted Stock requesting the registration of shares may designate the managing underwriter of such offering, subject to the approval of the Company which approval shall not be unreasonably withheld, delayed or conditioned. The right of any holder to include its Restricted Stock in such registration statement pursuant to Section 4 or Section 6 as the case may be, shall be conditioned upon such holder's participation in such underwriting on the terms set forth herein."

3. Section 12(e) of the Investor Rights Agreement shall be amended and restated in its entirety to read as follows:

"(e) Termination of Right of First Refusal. The rights of the Offerees under this Section 12 shall terminate immediately prior to, but subject to, the consummation of a Qualified Public Offering; *provided, however,* that the rights of the Investors pursuant to this Section 12 may be waived as to all of such Investors by the affirmative vote or written consent of holders of at least two-thirds (66 2/3%) in interest of the then outstanding Restricted Stock, and any such waiver shall be binding on all Investors, even if any of such Investors do not execute such waiver and irrespective of whether one or more Investors participates in the purchase of the Offered Securities."

4. The first paragraph of Section 13(a) of the Investor Rights Agreement shall be amended and restated in its entirety to read as follows:

"(a) Affirmative Covenants of the Company Other Than Reporting Requirements. Without limiting any other covenants and provisions hereof, and except to the extent the following covenants and provisions of this Section 13(a) are waived in any instance by the holders of two-thirds (66 2/3%) in interest of the holders of Preferred Stock, the Company covenants and agrees that until the consummation of a Qualified Public Offering it will perform and observe the following covenants and provisions, and will cause each Subsidiary, if and when such Subsidiary exists, to perform and observe such of the following covenants and provisions as are applicable to such Subsidiary:"

5. The first paragraph of Section 13(b) of the Investor Rights Agreement shall be amended and restated in its entirety to read as follows:

"(b) Negative Covenants of the Company. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that, until the consummation of a Qualified Public Offering or, while this Agreement remains outstanding, it will comply with and observe the following covenants and provisions, and will cause each Subsidiary, if and when such Subsidiary exists, to comply with and observe such of the following covenants and provisions as are applicable to such Subsidiary, and will not, without the written consent or waiver of two-thirds (66 2/3%) in interest of the holders of Preferred Stock:"

6. Section 15(i) of the Investor Rights Agreement shall be amended and restated in its entirety to read as follows:

"(i) The Company shall not grant to any third party any registration rights so long as any of the registration rights under this Agreement remains in effect, *provided, however,* that the Company may grant registration rights under Sections 4, 5 and 6 hereof and information rights under Section 13(c) hereof upon receipt of prior written consent of holders of at least two-thirds (66 2/3%) in interest of the outstanding Conversion Shares issued or issuable upon conversion of the Preferred Stock."

7. The Schedule of Investors attached to the Investor Rights Agreement shall be replaced in its entirety with the Schedule of Investors attached as Exhibit A to this Amendment.

8. This Amendment shall be construed and enforced in accordance with and governed by the internal laws of the State of Delaware, without regard to its principles of conflicts of laws.

9. This Amendment may be executed and delivered (including by facsimile transmission) in more than one counterpart, each of which shall be deemed to be an original and which, together, shall constitute one and the same instrument.

10. The provisions of this Amendment are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of a provision contained in this Amendment shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Amendment; but this Amendment shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

11. This Amendment and the Investor Rights Agreement (including any and all exhibits, schedules and other instruments contemplated hereby and thereby) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between them or any of them as to such subject matter. Except

as amended by this Amendment, the Investor Rights Agreement remains in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Investor Rights Agreement under seal as of the date first above written.

SUPERNUS PHARMACEUTICALS, INC.

By: /s/ Jack Khattar
Name: Jack Khattar
Title: President & CEO

[Signature Page to Amendment No. 1 to Investor Rights Agreement]

INVESTORS:

NEW ENTERPRISE ASSOCIATES 11, LIMITED PARTNERSHIP

By: NEA Partners 11, Limited Partnership, its general partner
By: NEA 11 GP, LLC, its general partner

By: /s/ Eugene A. Tramor, III, Manager
Eugene A. Tramor, III

NEA VENTURES 2005, LIMITED PARTNERSHIP

By: /s/ Pamela J. Clark, Vice President
Pamela J. Clark

[Signature Page to Amendment No. 1 to Investor Rights Agreement]

INVESTORS:

CADUCEUS PRIVATE INVESTMENTS II, LP

By: OrbiMed Capital II LLC
Its: General Partner

By: /s/ Michael Sheffery
Name: Michael Sheffery
Title: General Partner

CADUCEUS PRIVATE INVESTMENTS (QP) II, LP

By: OrbiMed Capital II LLC
Its: General Partner

By: /s/ Michael Sheffery
Name: Michael Sheffery
Title: General Partner

UBS JUNIPER CROSSOVER FUND, L.L.C.

By: OrbiMed Advisors LLC
Its: Member

By: /s/ Michael Sheffery
Name: Michael Sheffery
Title: General Partner

INVESTORS:

SHIRE LABORATORIES INC.

By: /s/ Angus Russell

Name: Angus Russell
Title: Director

[Signature Page to Amendment No. 1 to Investor Rights Agreement]

Exhibit A

SCHEDULE OF INVESTORS

Investors

New Enterprise Associates 11, Limited Partnership
1119 St. Paul Street
Baltimore, MD 21202

NEA Ventures 2005, Limited Partnership
1119 St. Paul Street
Baltimore, MD 21202

Caduceus Private Investments II, LP
c/o OrbiMed Advisors LLC
767 Third Avenue, 30th Floor
New York, NY 10017
Attn: Michael B. Sheffery

Caduceus Private Investments II (QP), LP
c/o OrbiMed Advisors LLC
767 Third Avenue, 30th Floor
New York, NY 10017
Attn: Michael B. Sheffery

UBS Juniper Crossover Fund, LLC
c/o OrbiMed Advisors LLC
767 Third Avenue, 30th Floor
New York, NY 10017
Attn: Michael B. Sheffery

Shire Laboratories Inc.
c/o 11200 Gundry Lane
Owings Mills, Maryland 21117
Attention: Richard Couch

Abingworth Bioventures IV LP
38 Jermyn Street
London SW1Y 6DN
Attention: General Counsel

with a copy to:
Abingworth Management, Inc.
890 Winter Street
Waltham, MA 02451

Abingworth Bioventures IV Executives LP
38 Jermyn Street
London SW1Y 6DN
Attention: General Counsel

with a copy to:
Abingworth Management, Inc.
890 Winter Street
Waltham, MA 02451

EXHIBIT 21.1

SUBSIDIARIES OF SUPERNUS PHARMACEUTICALS, INC.

Name of Subsidiary	Jurisdiction of Organization
TCD Royalty Sub LLC	Delaware

QuickLinks

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated April 28, 2010, in the Registration Statement (Form S-1) and related Prospectus of Supernus Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

McLean, Virginia
December 21, 2010