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As filed with the Securities and Exchange Commission on March 8, 2007

Registration No. 333 -

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

JAZZ PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**05-0563787**
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification Number)**

3180 Porter Drive
Palo Alto, CA 94304
(650) 496-3777
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Samuel R. Saks, M.D.
Chief Executive Officer
3180 Porter Drive
Palo Alto, CA 94304
(650) 496-3777
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

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

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

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

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

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, $.0001 par value per share	$172,500,000	$5,296

(1) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended. Includes $22,500,000 of shares that the underwriters have the option to purchase to cover over-allotments, if any.

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 that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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

PROSPECTUS (Subject to Completion)
Issued , 2007

Shares

COMMON STOCK

Jazz Pharmaceuticals, Inc. is offering shares of its common stock. This is our initial public offering and no public market exists for our shares. We anticipate that the initial public offering price will be between $ and $ per share.

We have applied to have our common stock listed on the NASDAQ Global Market under the symbol "JAZZ".

Investing in the common stock involves risks. See " Risk Factors" beginning on page 8.

PRICE $ A SHARE

	Price to Public	***Underwriting Discounts and Commissions***	***Proceeds to Jazz Pharmaceuticals***
Per Share	*$*	*$*	*$*
Total	*$*	*$*	*$*

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

The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2007.

MORGAN STANLEY *LEHMAN BROTHERS*

CREDIT SUISSE

NATEXIS BLEICHROEDER INC.

, 2007

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You should rely only on the information contained in this prospectus or any related free writing prospectus we may authorize to be delivered to you. We have not, and the underwriters have not, authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell, and are seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus or any related free writing prospectus is accurate only as of its date, regardless of its time of delivery, or of any sale of the common stock. Our business, financial conditions, results of operations and prospects may have changed since that date.

Through and including , 2007 (25 days after the date of this prospectus), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

For investors outside of the United States: Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

PROSPECTUS SUMMARY

The following summary is qualified in its entirety by, and should be read together with, the more detailed information and financial statements and related notes thereto appearing elsewhere in this prospectus. This summary highlights what we believe is the most important information about us and this offering. Before you decide to invest in our common stock, you should read the entire prospectus carefully, including the "Risk Factors" section and the financial statements and related notes included in this prospectus.

JAZZ PHARMACEUTICALS, INC.

Corporate Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies available from third parties, we also explore potential new indications for known drug compounds. Since our inception in 2003, our experienced executive management team has built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $41.9 million in 2006, one product candidate for which an approvable letter has been issued by the U.S. Food and Drug Administration, or FDA, and five product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development.

Our most significant marketed product and late-stage product candidates are:

- *Xyrem (sodium oxybate oral solution).* Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. Cataplexy, the sudden loss of muscle tone, is the most well-recognized symptom of narcolepsy. Excessive daytime sleepiness is the most common symptom of narcolepsy and is present in all narcolepsy patients. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our 55 person specialty sales force. We have significantly increased domestic net product sales of Xyrem since our acquisition of Orphan Medical, Inc. in June 2005. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB has commercially launched Xyrem in 11 countries.
- *Luvox CR (fluvoxamine maleate extended release capsules).* Our most advanced product candidate is Luvox CR, an extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor, or SSRI, which has been developed for the treatment of obsessive compulsive disorder, or OCD, and social anxiety disorder, or SAD. According to the National Institute of Mental Health, OCD and SAD affect approximately 2.2 million and 15 million adults in the United States, respectively. We obtained the U.S. marketing rights to Luvox CR from Solvay Pharmaceuticals, Inc., or Solvay, in January 2007. Solvay submitted a new drug application, or NDA, to the FDA for Luvox CR in April 2006, and, in

February 2007, the FDA issued an approvable letter. Subject to the satisfaction of certain requirements set forth in the approvable letter and FDA approval, we expect to commence promotion of Luvox CR in the United States in the first quarter of 2008 through a significantly expanded specialty sales force. During 2007, we expect to make significant expenditures relating to the planned commercial launch of Luvox CR.

- *JZP-6 (sodium oxybate).* We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient, or API, in Xyrem, for the treatment of fibromyalgia syndrome, or FMS. FMS is a chronic pain condition that affects between two and four percent of the U.S. population, according to the American College of Rheumatology. There are currently no products approved by the FDA for the treatment of FMS. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of FMS. We are currently conducting two Phase III pivotal clinical trials and we expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. We have granted UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.

In addition to our product candidates in late-stage development, our clinical development pipeline consists of the following product candidates:

- *JZP-4 (Type IIa sodium channel antagonist).* JZP-4, a controlled release formulation of an anticonvulsant that is in the same chemical class as Lamictal (lamotrigine), an antiepileptic drug marketed by GlaxoSmithKline, is being developed for the treatment of epilepsy and bipolar disorder. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy and, according to the National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder. We plan to commence a Phase II clinical trial of JZP-4 for the treatment of epilepsy in the fourth quarter of 2007.
- *JZP-8 (benzodiazepine).* JZP-8, a novel formulation incorporating a benzodiazepine, is being developed for the treatment of acute repetitive seizure clusters, or RSCs, in refractory epilepsy patients. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are refractory to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience RSCs. We have completed development activities to select the API for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We plan to commence a Phase II clinical trial of JZP-8 for the treatment of acute RSCs in refractory epilepsy patients in the third quarter of 2007.
- *JZP-7 (dopamine agonist).* JZP-7, a novel formulation incorporating a dopamine agonist, is being developed for the treatment of restless legs syndrome, or RLS. According to the RLS Foundation, up to 10% of the U.S. population suffers from RLS. We have completed development activities to select the API for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We intend to conduct an additional pharmacokinetics study in 2007 prior to commencing Phase II clinical trials for the treatment of RLS.
- *JZP-2 (benzodiazepine).* JZP-2, a fast-acting formulation of a benzodiazepine, is being developed for the acute treatment of panic attacks associated with panic disorder. According to the National Institute of Mental Health, approximately six million people in the United States suffer from panic disorder in any given year. We have developed a target formulation for JZP-2 and plan to commence one or more clinical trials of JZP-2 with this formulation in 2007.

We have an ongoing program for generating, identifying and conducting feasibility studies for new product candidates. Our JZP-2, JZP-7 and JZP-8 product candidates resulted from this program. Several other product candidates identified through this program are in various stages of early development, including the use of

sodium oxybate, the API in Xyrem, for the treatment of movement disorders. In addition, as part of our lifecycle management activities, we are conducting activities directed to developing new forms of sodium oxybate.

Our executive management team has substantial experience in developing and commercializing novel therapeutic products. During their ten years working together as part of the executive management team at ALZA Corporation, a pharmaceutical company acquired by Johnson & Johnson in 2001, our executive management team participated in the successful development and commercialization of a broad portfolio of products and product candidates to address specialized markets.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry and, over the longer term, in additional specialty therapeutic areas. Key elements of our strategy to achieve this goal include:

- focusing on specialty markets, particularly neurology and psychiatry, in which a relatively small number of healthcare providers write a large percentage of prescriptions for the indications we target;
- expanding and leveraging our U.S. specialty sales force to promote our growing portfolio of commercial products;
- mitigating risks and reducing the costs and time associated with the development and commercialization of our products by focusing on known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, and structuring our development and commercial relationships to minimize financial risk;
- expanding our portfolio to include additional products and product candidates that we believe have significant commercial potential through our internal research and development efforts and our acquisition and in-licensing activities; and
- leveraging the expertise of our experienced executive management team in developing and commercializing novel therapeutic products.

Risks Associated with Our Business

We are a specialty pharmaceutical company with historical net operating losses, and our operations to date have generated substantial and increasing needs for cash. Our business and our ability to execute on our business strategy are subject to many risks that you should be aware of before you decide to buy our common stock. These risks are discussed more fully in “Risk Factors” beginning on page 8. For example:

- Our clinical trials may fail to adequately demonstrate the safety and effectiveness of our product candidates. If a product candidate fails at any stage of development, we will not have the anticipated revenues from that product candidate to fund our operations, and we will not receive any return on our investment in that product candidate.
- The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our partners from obtaining regulatory approvals for the commercialization of some or all of our product candidates. If we receive regulatory approval for our product candidates, we will be subject to ongoing significant regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products.
- Even if approved for sale by the appropriate regulatory authorities, our products may not achieve market acceptance. Market acceptance is dependent upon, among other things, the availability of

adequate reimbursement by third parties and acceptance by physicians and patients of each of our products as a safe and effective treatment.

- We face competition from both generic and branded pharmaceutical products and if we are unable to demonstrate to physicians that, based on experience, clinical data, side-effect profiles and other factors, our products are preferable to other therapies, we may not generate meaningful revenues from sales of our products.
- Our ability to grow our business is dependent on our ability to successfully develop, acquire or in-license new products and product candidates.
- Since our inception in 2003, we have incurred net losses, and we expect to continue to incur net losses for the next several years. We are unable to predict with certainty the extent of any future losses or when we will become profitable. We will also need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, if at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations.

Corporate Information

We were incorporated in California in March 2003, and we reincorporated in Delaware in January 2004. Our principal executive office is located at 3180 Porter Drive, Palo Alto, California 94304. Our telephone number is (650) 496-3777. Our website address is www.jazzpharmaceuticals.com. Information contained in, or accessible through, our website does not constitute a part of this prospectus.

Unless the context indicates otherwise, as used in this prospectus, the terms “Jazz Pharmaceuticals,” “we,” “us” and “our” refer to Jazz Pharmaceuticals, Inc., a Delaware corporation, and its subsidiaries. We use Jazz Pharmaceuticals™, Xyrem®, Antizol®, Luvox® and the Jazz Pharmaceuticals logo as trademarks in the United States and other countries. We have licensed the right to use the registered trademarks Antizol® from Mericon Investment Group, Inc. and Luvox® from Solvay Pharmaceuticals, Inc. All other trademarks or trade names referred to in this prospectus are the property of their respective owners.

Market Data

This prospectus contains market data and industry forecasts that were obtained from industry publications. We have not independently verified any of this information.

THE OFFERING

Common stock offered by us	shares
Common stock outstanding after this offering	shares
Over-allotment option	shares
Use of proceeds	We expect to use the net proceeds from this offering (1) to fund activities and make milestone payments related to the planned launch and commercialization of Luvox CR, (2) to fund our Phase III pivotal clinical trials of JZP-6, (3) to fund continued development and feasibility activities related to our portfolio of clinical and early-stage product candidates and (4) for working capital, capital expenditures and other general corporate purposes. See "Use of Proceeds."
Proposed NASDAQ Global Market symbol	JAZZ

The number of shares of common stock outstanding immediately after this offering is based on 205,243,938 shares of common stock outstanding as of December 31, 2006. This number excludes:

- 17,677,564 shares of common stock issuable upon the exercise of options outstanding as of December 31, 2006, having a weighted average exercise price of $1.95 per share;
- 5,378,732 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan as of December 31, 2006; provided, however, that immediately upon the signing of the underwriting agreement for this offering, our 2003 Equity Incentive Plan will terminate so that no further awards may be granted under our 2003 Equity Incentive Plan;
- an aggregate of shares of common stock reserved for future issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan, each of which will become effective immediately upon the signing of the underwriting agreement for this offering; and
- 8,695,652 shares of common stock issuable upon the exercise of warrants outstanding as of December 31, 2006, having an exercise price of $1.84 per share.

Except as otherwise indicated, all information in this prospectus assumes:

- a -for- reverse stock split of our common stock and preferred stock to be effective prior to the closing of this offering;
- the conversion of all our outstanding shares of preferred stock into 198,338,205 shares of common stock immediately prior to the closing of this offering;
- the filing of our third amended and restated certificate of incorporation, which will occur immediately prior to the closing of this offering; and
- no exercise of the underwriters' over-allotment option.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following table summarizes our financial data. We have derived the following summary of our consolidated statements of operations data for the years ended December 31, 2004, 2005 and 2006 from our audited consolidated financial statements appearing elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in the future. The summary of our financial data set forth below should be read together with our consolidated financial statements and the related notes to those statements, as well as "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," appearing elsewhere in this prospectus. The pro forma as adjusted balance sheet data give effect to the conversion of all outstanding shares of convertible preferred stock into common stock immediately prior to the closing of this offering, and to reflect the sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, the mid-point of the range reflected on the cover page on this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

	Year Ended December 31,		
	2004	2005(1)	2006
	(In thousands, except per share data)		
Consolidated Statements of Operations Data:			
Revenues:			
Product sales, net	$ —	$ 18,796	$ 43,299
Royalties, net	—	146	594
Contract revenues	—	2,500	963
Total revenues	—	21,442	44,856
Operating expenses:			
Cost of product sales	—	4,292	6,968
Research and development	17,988	45,783	54,956
Selling, general and administrative	7,459	23,551	51,384
Amortization of intangible assets	—	4,960	9,600
Purchased in-process research and development	—	21,300	—
Total operating expenses	25,447	99,886	122,908
Loss from operations	(25,447)	(78,444)	(78,052)
Interest income	643	1,318	2,307
Interest expense (including $4,595 and $9,024 for the years ended December 31, 2005 and 2006, respectively, pertaining to related parties)	—	(7,129)	(14,129)
Other expense	—	(901)	(1,109)
Gain on extinguishment of development financing obligation	—	—	31,592
Net loss	(24,804)	(85,156)	(59,391)
Beneficial conversion feature	—	—	(21,920)
Loss attributable to common stockholders	$(24,804)	$ (85,156)	$ (81,311)
Loss attributable to common stockholders per share, basic and diluted	$(137.80)	$(1,216.51)	$ (572.61)
Weighted-average shares used in computing loss per share attributable to common stockholders, basic and diluted	180	70	142
Pro forma loss attributable to common stockholders per share, basic and diluted (unaudited)(2)			
Pro-forma weighted-average shares used in computing loss per share attributable to common stockholders, basic and diluted (unaudited)(2)			

	As of December 31, 2006	
	Actual	Pro Forma As Adjusted(3)
		(Unaudited)
	(In thousands)	
Consolidated Balance Sheet Data:		
Cash and cash equivalents	$ 78,948	
Working capital	61,043	
Total assets	214,571	
Senior secured notes (including $51,998 as of December 31, 2006 held by related parties)	74,283	
Convertible preferred stock	263,852	
Common stock subject to repurchase	8,183	
Accumulated deficit	(177,643)	
Total stockholders' equity (deficit)	(176,296)	

(1) We acquired Orphan Medical on June 24, 2005 and the results of Orphan Medical are included in the consolidated financial statements from that date.
(2) Assumes the conversion of all outstanding shares of convertible preferred stock outstanding as of December 31, 2006 into common stock.
(3) Each $ increase (decrease) in the assumed initial public offering price of $ per share, would increase (decrease) each of cash and cash equivalents, working capital, total assets and total stockholders' equity (deficit) 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 the underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase of million shares in the number of shares offered by us, together with a concomitant $ increase in the assumed initial public offering price of $ per share, would increase each of cash and cash equivalents, working capital, total assets and total stockholders' equity (deficit) by approximately $ million. Similarly, each decrease of million shares in the number of shares offered by us, together with a concomitant $ decrease in the assumed initial public offering price of $ per share, would decrease each of cash and cash equivalents, working capital, total assets and total stockholders' equity (deficit) by approximately $ million. The pro forma information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

RISK FACTORS

You should carefully consider the risks described below, which we believe are the material risks of our business and this offering, before making an investment decision. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. Our business could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of your investment. In assessing these risks, you should also refer to the other information contained in this prospectus, including our financial statements and related notes.

Risks Related to Our Business

The FDA may not approve Luvox CR for marketing in the United States, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

In January 2007, we licensed from Solvay the exclusive U.S. rights to Luvox CR and Luvox. Luvox CR was developed by Solvay in collaboration with Elan Pharma International Limited, or Elan. In December 2000, Solvay submitted an NDA to the FDA for Luvox CR for the treatment of OCD and SAD. In June 2001, as a result of challenges related to Elan's scale-up of the process to manufacture commercial quantities of Luvox CR, Solvay and Elan mutually agreed to withdraw the NDA for Luvox CR. In April 2006, Solvay resubmitted the Luvox CR NDA to the FDA, requesting approval to market the product for the treatment of OCD and SAD. In February 2007, the FDA issued an approvable letter. Solvay must satisfy the conditions set forth in the letter in order to obtain FDA approval. If Solvay is unable to meet these conditions, or for other reasons, the FDA may not approve Luvox CR for marketing in the United States. The failure to obtain marketing approval for Luvox CR could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Our only product candidate currently in Phase III clinical trials is JZP-6 for the treatment of FMS. The Phase III clinical trials may not show JZP-6 to be safe and effective for the treatment of FMS or the FDA may not otherwise approve JZP-6 for marketing, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We are currently conducting two Phase III pivotal clinical trials for the use of JZP-6 to treat FMS, both of which must have statistically significant positive results before we can submit an NDA to the FDA seeking approval of JZP-6 for the treatment of FMS. Our Phase III clinical program for JZP-6 is costly, and we do not expect to complete the program until early 2009. We do not know if our ongoing Phase III pivotal clinical trials will show JZP-6 to be safe and effective for the treatment of FMS, or if the FDA or other regulatory authorities will approve JZP-6 for the treatment of FMS. Favorable results from our prior Phase II clinical trials with JZP-6 for the treatment of FMS may not be indicative of the clinical results from our Phase III pivotal clinical trials. Further, although JZP-6 has the same API as Xyrem, which has been approved by the FDA for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy, this does not assure approval by the FDA, or any other regulatory authorities, of this API for the treatment of FMS. Unsuccessful Phase III pivotal clinical trials or a failure to obtain FDA or other regulatory approval of JZP-6 for FMS could have a material adverse effect on our business, financial condition, results of operations and growth prospects. Even if the FDA approves JZP-6 for the treatment of FMS, the FDA is likely to require us to have a risk management program similar to the one we use for Xyrem. The Xyrem risk management program is labor intensive, complex and expensive. A similar risk management program for JZP-6 could make it difficult for us to effectively supply the FMS market and could limit sales of JZP-6. Moreover, a risk management program for JZP-6 in FMS could make the product less attractive to physicians and patients than other products that are not subject to the same requirements for distribution.

Many of our product candidates are in preclinical or early-stage clinical trials. A failure to prove that our product candidates are safe and effective in clinical trials would require us to discontinue their development, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

Significant additional research and development, financial resources and additional personnel will be required to obtain necessary regulatory approvals for our product candidates and to develop them into commercially viable products. As a condition to regulatory approval, each product candidate must undergo extensive clinical trials to demonstrate to a statistically significant degree that the product candidate is safe and effective. The clinical trials for a product candidate can cost between $40.0 million and $100.0 million, and potentially even more. If a product candidate fails at any stage of development, we will not have the anticipated revenues from that product candidate to fund our operations, and we will not receive any return on our investment in that product candidate. For example, our Phase III clinical trial of JZP-3, a product candidate for the treatment of general anxiety disorder, was not successful after we incurred significant development costs, and we ceased further development of JZP-3.

Clinical testing can take many years to complete, and failure can occur any time during the clinical trial process. In addition, the results from early clinical trials may not be predictive of results obtained in later and larger clinical trials, and product candidates in later clinical trials may fail to show the desired safety and efficacy despite having progressed successfully through initial clinical testing. A number of companies in the pharmaceutical industry, including us, have suffered significant setbacks in clinical trials, even in advanced clinical trials after showing positive results in earlier clinical trials. The completion of clinical trials for our product candidates may be delayed or halted for many reasons, including:

- delays in patient enrollment, and variability in the number and types of patients available for clinical trials;
- regulators or institutional review boards may not authorize us to commence or continue a clinical trial;
- our inability, or the inability of our partners, to manufacture or obtain from third parties materials sufficient to complete our clinical trials;
- delays or failure in reaching agreement on acceptable clinical trial contracts or clinical trial protocols with prospective sites;
- risks associated with trial design, which may result in a failure of the trial to show statistically significant results even if the product candidate is effective;
- difficulty in maintaining contact with patients after treatment commences, resulting in incomplete data;
- poor effectiveness of product candidates during clinical trials;
- safety issues, including adverse events associated with product candidates;
- the failure of patients to complete clinical trials due to adverse side effects, dissatisfaction with the product candidate, or other reasons;
- governmental or regulatory delays or changes in regulatory requirements, policy and guidelines; and
- varying interpretation of data by the FDA or foreign regulatory agencies.

In addition, our product candidates are subject to competition for clinical study sites and patients from other therapies under development that may delay the enrollment in or initiation of our clinical trials. For example, other companies have stated publicly that they are testing product candidates for the treatment of FMS. Some of these companies have more significant financial and human resources than we do.

The FDA or foreign regulatory authorities may require us to conduct unanticipated additional clinical trials, which could result in additional expense and delays in bringing our product candidates to market. Any failure or delay in completing clinical trials for our product candidates would prevent or delay the commercialization of our product candidates, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

We rely on third parties to conduct clinical trials for our product candidates, and if they do not properly and successfully perform their legal and regulatory obligations, as well as their contractual obligations to us, we may not be able to obtain regulatory approvals for our product candidates.

We design the clinical trials for our product candidates, but rely on contract research organizations and other third parties to assist us in managing, monitoring and otherwise carrying out these trials, including with respect to site selection, contract negotiation and data management. We do not control these third parties and, as a result, they may not treat our clinical studies as their highest priority, or in the manner in which we would prefer, which could result in delays.

Although we rely on third parties to conduct our clinical trials, we are responsible for confirming that each of our clinical trials is conducted in accordance with its general investigational plan and protocol. Moreover, the FDA and foreign regulatory agencies require us to comply with regulations and standards, commonly referred to as good clinical practices, for conducting, recording and reporting the results of clinical trials to ensure that the data and results are credible and accurate and that the trial participants are adequately protected. Our reliance on third parties does not relieve us of these responsibilities and requirements. The FDA enforces good clinical practices through periodic inspections of trial sponsors, principal investigators and trial sites. If we, our contract research organizations or our study sites fail to comply with applicable good clinical practices, the clinical data generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA will determine that any of our clinical trials comply with good clinical practices. In addition, our clinical trials must be conducted with product produced under the FDA's current Good Manufacturing Practices, or cGMP, regulations. Our failure, or the failure of our contract manufacturers, to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

If third parties do not successfully carry out their duties under their agreements with us, if the quality or accuracy of the data they obtain is compromised due to failure to adhere to our clinical protocols or regulatory requirements, or if they otherwise fail to comply with clinical trial protocols or meet expected deadlines, our clinical trials may not meet regulatory requirements. If our clinical trials do not meet regulatory requirements or if these third parties need to be replaced, our clinical trials may be extended, delayed, suspended or terminated. If any of these events occur, we may not be able to obtain regulatory approval of our product candidates.

The commercial success of our products will depend 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 products, in which case we would not generate the revenues we anticipate. Market acceptance of any our products by physicians, patients, third party payors and the medical community will depend on:

- the clinical indications for which a product is approved;
- prevalence of the disease or condition for which the product is approved and the severity of side effects;
- acceptance by physicians and patients of each product as a safe and effective treatment;
- perceived advantages over alternative treatments;
- relative convenience and ease of administration;
- the cost of treatment in relation to alternative treatments, including generic products;
- the extent to which the product is approved for inclusion on formularies of hospitals and managed care organizations; and
- the availability of adequate reimbursement by third parties.

We depend upon UCB to market and promote Xyrem outside of the United States, and we are dependent upon our collaboration with UCB for the development and potential commercialization of JZP-6 for the treatment of FMS in major markets outside of the United States.

We have exclusively licensed to UCB the rights to market and promote Xyrem in 54 countries outside of the United States. If UCB does not obtain regulatory approvals for and launch Xyrem in its licensed countries in the time frames that we expect, or at all, our revenues would be adversely affected. If UCB terminates its relationship with us, we would need to find another party or parties to commercialize Xyrem in UCB's licensed territories. We may be unable to find another party or parties on acceptable terms, or at all, which could materially and adversely affect our business, financial condition, results of operations and growth prospects. In addition, under the terms of our collaboration with UCB, we granted UCB the exclusive right to commercialize JZP-6 for the treatment of FMS in the same territories that UCB has the right to market and promote Xyrem for patients with narcolepsy. We have relied and will continue to rely in part on milestone payments from UCB to reduce our development costs of JZP-6. UCB has the right to terminate our collaboration on 18 months' notice (or less in certain circumstances). If UCB terminates our collaboration, we would need to find another party or parties to commercialize JZP-6 in UCB's territories and may need to execute alternative financing plans to help fund our development of JZP-6. We may be unable to do either of these on acceptable terms, or at all.

We depend on one central pharmacy distributor for Xyrem sales in the United States and the loss of that distributor or its failure to distribute Xyrem effectively would adversely affect sales of Xyrem.

As a condition of approval of Xyrem, the FDA mandated that we maintain a risk management program for Xyrem under which all Xyrem that we sell in the United States must be shipped directly to patients through a central pharmacy. The process under which patients receive Xyrem under our risk management program is cumbersome. If the central pharmacy does not fulfill its contractual obligations to us, or refuses or fails to adequately serve patients, shipments of Xyrem, and our sales, would be adversely affected. Changing central pharmacy distributors could take a significant amount of time and require FDA approval of the new central pharmacy distributor. In addition, sodium oxybate, the API in Xyrem, is regulated by the U.S. Drug Enforcement Administration, or DEA, as a controlled substance. The new distributor would need to be registered with the DEA and would also need to develop the particular processes, procedures and activities necessary to distribute Xyrem, including the risk management program approved by the FDA. If we change distributors, new contracts might also be required with government and other insurers who pay for Xyrem. Transitioning to a new distributor could result in product shortages, which would adversely affect sales of Xyrem in the United States.

Our supplier of API and our product manufacturer must obtain DEA quotas in order to supply us with Xyrem, JZP-6 and sodium oxybate, and these quotas may not be sufficient to satisfy our clinical and commercial needs.

The DEA limits the quantity of certain Schedule I and II controlled substances that may be produced in the United States in any given calendar year through a quota system. Because sodium oxybate, the API in Xyrem and JZP-6, is a Schedule I controlled substance, our supplier of the API and our product manufacturer must obtain DEA quotas in order to supply us with sodium oxybate, Xyrem and JZP-6. Since the DEA typically grants quotas on an annual basis and requires a detailed submission and justification for each request, obtaining a DEA quota is a difficult and time consuming process. If our commercial or clinical requirements for sodium oxybate, Xyrem or JZP-6 exceed our supplier's and contract manufacturer's DEA quotas, our supplier and contract manufacturer would need quota increases from the DEA, which would be difficult and time consuming to obtain and might not ultimately be obtained on a timely basis, or at all. In cooperation with our manufacturing partners, we are seeking to significantly increase their 2007 quotas from the DEA for sodium oxybate, Xyrem and JZP-6 to satisfy the forecasted demand for Xyrem and to conduct our clinical studies of JZP-6. In the future, we intend to seek further increased quotas to supply and manufacture JZP-6 as necessary to complete our clinical trials and, if approved, to commercialize the product. However, our manufacturing partners may not be successful in obtaining increased

quotas from the DEA, and without sufficient DEA quotas, there could be shortages of Xyrem for the marketplace or JZP-6 for use in our clinical studies, or both. If our manufacturing partners are unable to obtain increased quotas from the DEA, we may have to reduce the enrollment rate in our Phase III pivotal clinical trials of JZP-6 until additional quantities of JZP-6 are obtained.

We depend on single source suppliers and manufacturers for each of our products and product candidates. The loss of any of these suppliers or manufacturers, or delays or problems in the supply or manufacture of our products for commercial sale or our product candidates for use in our clinical trials, could materially and adversely affect our business, financial condition, results of operations and growth prospects.

We do not have, and do not intend to establish in the near term, our own manufacturing or packaging capability for our products or product candidates, or their APIs. Accordingly, we have entered into manufacturing and supply agreements with single source suppliers and manufacturers for our commercialized products and product candidates. Our suppliers and contract manufacturers may not be able to manufacture our products or product candidates without interruption, or may not comply with their obligations to us under our supply and manufacturing arrangements. We may not have adequate remedies for any breach and their failure to supply us could result in a shortage of our products or product candidates.

The availability of our products for commercial sale is dependent upon our ability to procure the ingredients, packaging materials and finished products we need. If one of our suppliers or product manufacturers fails or refuses to supply us for any reason, it would take a significant amount of time and expense to qualify a new supplier or manufacturer. The loss of one of our suppliers or product manufacturers could require us to obtain regulatory clearance in the form of a "prior approval supplement" and to incur validation and other costs associated with the transfer of the API or product manufacturing process. We believe that it could take as long as two years to qualify a new supplier or manufacturer. Should we lose either an API supplier or a product manufacturer, we could run out of salable product to meet market demands or investigational product for use in clinical trials while we wait for FDA approval of a new API supplier or product manufacturer. For Xyrem, JZP-6 or sodium oxybate, the new supplier or manufacturer would also need to be registered with the DEA and obtain a DEA quota. In addition, the FDA must approve suppliers of the active and inactive pharmaceutical ingredients and certain packaging materials used in our products, as well as suppliers of finished products. The qualification of new suppliers and manufacturers could potentially delay the manufacture of our products and product candidates and result in shortages in the marketplace or for our clinical trials, or both, particularly since we do not have secondary sources of supply of the API or backup manufacturers for our products and product candidates. If there are delays in qualifying the new manufacturer or the new manufacturer is unable to obtain a sufficient quota from the DEA, there could be a shortage of Xyrem for the marketplace. Furthermore, we may not be able to obtain APIs, packaging materials or finished products from new suppliers on acceptable terms and at reasonable prices, or at all.

Due to FDA-mandated dating requirements, DEA quotas relating to Xyrem and JZP-6, and the limited market size for our approved products, we are subject to complex manufacturing logistics and minimum order quantities that could result in excess inventory as determined under our accounting policy, unsalable inventory as a result of product expiring prior to use, and competition with others for manufacturing services when needed or expected. We have adopted a production planning program to assess and manage manufacturing logistics among the vendors supplying our requirements of API, drug product and packaging; however, unexpected market requirements or problems with vendors' facilities, among other things, could result in shortages of one or more of our products for the marketplace or product candidates for use in our clinical studies, or both.

Failure by our third party manufacturers to comply with regulatory requirements could adversely affect their ability to supply products to us. All facilities and manufacturing techniques used for the manufacture of pharmaceutical products must be operated in conformity with cGMP requirements. In complying with cGMP requirements, our suppliers must continually expend time, money and effort in production, record-keeping and

quality assurance and control to ensure that our products and product candidates meet applicable specifications and other requirements for product safety, efficacy and quality. DEA regulations also govern facilities where controlled substances such as sodium oxybate are manufactured. Manufacturing facilities are subject to periodic unannounced inspection by the FDA, the DEA and other regulatory authorities, including state authorities. Failure to comply with applicable legal requirements subjects the suppliers to possible legal or regulatory action, including shutdown, which may adversely affect their ability to supply us with the ingredients or finished products we need.

Any delay in supplying, or failure to supply, products by any of our suppliers could result in our inability to meet the commercial demand for our products or our needs for use in clinical trials, and could adversely affect our business, financial condition, results of operations and growth prospects. In addition, under our agreements with UCB and Valeant, we are responsible for the supply of Xyrem and JZP-6 to UCB and Xyrem, and potentially JZP-6, to Valeant. Our failure to meet our contractual obligations to supply UCB and Valeant with adequate quantities of Xyrem and JZP-6 would result in lost revenues to us and, if material, could result in termination of our agreements by UCB or Valeant.

Our product candidates have never been manufactured on a commercial scale and there are risks associated with scaling up manufacturing to commercial scale.

Our product candidates have never been manufactured on a commercial scale and there are risks associated with scaling up manufacturing to commercial scale including, among others, cost overruns, potential problems with process scale-up, process reproducibility, stability issues, lot consistency and timely availability of raw materials. For example, if Luvox CR is approved for commercial sale, Elan will manufacture Luvox CR for us in commercial quantities in exchange for royalty and milestone payments and supply price payments. Luvox CR has never been produced on a commercial scale, and the NDA for Luvox CR was withdrawn in June 2001 by Solvay and Elan as a result of difficulties encountered during the scale-up of manufacturing of Luvox CR. Although the FDA has issued an approvable letter, there is no assurance that Elan will be able to manufacture Luvox CR to specifications acceptable to the FDA, or if Luvox CR is approved, to produce it in sufficient quantities to meet the requirements for the potential launch of the product or to meet potential future demand. If our manufacturers are unable to produce sufficient quantities of our products for commercialization, our commercialization efforts would be impaired, which would have an adverse effect on our business, financial condition, results of operations and growth prospects.

We could be materially adversely affected if we or our products are subject to negative publicity. For example, sodium oxybate, the API in Xyrem and JZP-6, is a derivative of gamma hydroxybutyrate, or GHB, which has been a drug of abuse and may not be sold legally in the United States. If physicians and patients perceive Xyrem and JZP-6 to be the same as or similar to GHB, sales of Xyrem and JZP-6 could be adversely affected.

From time to time, there is negative publicity about GHB and its effects, including with respect to illegal use, overdoses, serious injury and death and because sodium oxybate, the API in Xyrem, is a derivative of GHB, Xyrem sometimes also receives negative mention in publicity relating to GHB. Because sodium oxybate is a derivative of GHB, patients, physicians and regulators may view Xyrem as the same as or similar to GHB. In addition, there are regulators and some law enforcement agencies that oppose the prescription and use of Xyrem generally. Xyrem's label includes information about adverse events from GHB, and we anticipate that if JZP-6 is approved, its label will include similar information. We could also be adversely affected if any of our products or any similar products distributed by other companies prove to be, or are asserted to be, harmful to consumers. Because of our dependence upon patient and physician perceptions, any adverse publicity associated with illness or other adverse effects resulting from the use or misuse of our products or any similar products distributed by other companies could materially and adversely affect our business, financial condition, results of operations and growth prospects.

An investigation by the U.S. Attorney for the Eastern District of New York concerning Orphan Medical's promotion of Xyrem could result in fines, penalties or other adverse consequences that could result in adverse publicity and could harm our business.

In April 2006, a physician who was a speaker for Orphan Medical (and for a short time for us) was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment alleges that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. We and Orphan Medical received subpoenas from the U.S. Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, in connection with this indictment and the accompanying investigation. As a result of our acquisition of Orphan Medical, the U.S. government may seek to hold us responsible for Orphan Medical's conduct, and the indictment has resulted in adverse publicity for Xyrem and for us. Companies that have been involved in similar investigations have often paid significant fines and have signed agreements with the U.S. government requiring them to undertake extensive and expensive remedial compliance programs. We have been in discussions with the U.S. Attorney's Office regarding the possible settlement of any potential U.S. government claims against Orphan Medical and/or us, but we cannot assure you that any settlement will be reached on reasonable terms, or at all, and we may be required to make significant monetary payments and to undertake extensive remedial compliance programs at significant expense to us. Even if we reach a settlement agreement with the U.S. Attorney's Office, we might also be subject to regulatory and/or enforcement action by federal agencies, private insurers and states' attorneys general. If we cannot reach a settlement with the U.S. Attorney's Office that is acceptable to us, we could be required to spend significant amounts defending ourselves and Orphan Medical. These matters may involve the filing of criminal charges, as well as criminal and/or civil fines and penalties, against us, or Orphan Medical, or both. We cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome. However, an adverse outcome could have a material adverse effect on our financial position, liquidity and results of operations.

Whether or not we resolve the ongoing investigation of Xyrem off-label promotion satisfactorily, there is no assurance that we will not be subject to future investigations. Many pharmaceutical companies have announced government investigations of their sales and marketing practices for many of their products. Even with compliance training and a company culture of compliance, our current or future practices may nonetheless become the subject of an investigation. A number of laws, often referred to as "whistleblower" statutes, provide for financial rewards to employees and others for bringing to the attention of the government sales and marketing practices that the government views as illegal or fraudulent. The costs of investigating any claims, responding to subpoenas of investigators, and any resulting fines, can be significant and could divert the attention of our management from operating our business.

Xyrem cannot be advertised directly to consumers, which could limit sales.

Because Xyrem is a derivative of GHB, a known drug of abuse, the FDA has required that Xyrem's label include a box warning regarding the risk of abuse. A box warning is the strongest type of warning that the FDA can require for a drug product and warns prescribers that the drug carries a significant risk of serious or even life-threatening adverse effects. A box warning also means, among other things, that the product cannot be advertised directly to consumers. Competing products may not be subject to this restriction, and the box warning may have a negative effect on Xyrem sales. If JZP-6 is approved by the FDA, we anticipate that the label for JZP-6 will also include a box warning. In addition, Xyrem's type of FDA approval under the FDA's Subpart H regulations requires that all of the promotional materials for Xyrem be provided to the FDA for review at least 30 days prior to the intended time of first use. Competing products may not be subject to these advertising limitations and pre-review requirements, which could result in significant marketing disadvantages for Xyrem and, if approved, JZP-6.

We face substantial competition from companies with greater resources than we have.

With respect to all of our existing and future products, we may compete with companies selling or working to develop products that may be more effective, safer or less costly than our products. The markets for which we are developing products are competitive and include generic and branded products, some of which are marketed by major pharmaceutical companies that have significantly greater financial resources and expertise in research and development, preclinical testing, conducting clinical trials, obtaining regulatory approvals, manufacturing and marketing and selling approved products than we do. Smaller or earlier stage companies may also prove to be significant competitors, particularly through collaborative arrangements with other large, established companies. Our commercial opportunities may be reduced or eliminated if our competitors develop and commercialize generic or branded products that are safer or more effective, have fewer side effects or are less expensive than our products.

Our competitors may obtain FDA or other regulatory approvals for their product candidates more rapidly than we may. For example, Eli Lilly and Company, Pfizer Inc. and Forest Laboratories, Inc., companies with far greater resources than we have, are each conducting Phase III clinical trials of, or have submitted NDAs or supplemental NDAs to the FDA with respect to, product candidates for the treatment of FMS. These product candidates may reach the market before JZP-6, or may be better accepted by physicians and patients. Thus, even if we successfully complete our Phase III clinical trials for JZP-6 for the treatment of FMS and achieve FDA approval, JZP-6 may not result in significant commercial revenues for us.

Our competitors may market their products more effectively than we do. If we are unable to demonstrate to physicians that, based on experience, clinical data, side-effect profiles and other factors, our products are preferable to other therapies, we may not generate meaningful revenues from the sales of our products.

If generic products that compete with any of our products are approved, sales of our products may be adversely affected.

Our products are or may become subject to competition from generic equivalents because there is no proprietary protection for some of our products or because our protection has expired or is not sufficiently broad. The FDA has granted orphan drug exclusivity for Xyrem until July 2009 for cataplexy in patients with narcolepsy, and until November 2012 for excessive daytime sleepiness in patients with narcolepsy. Once our orphan drug exclusivity periods for Xyrem expire, other companies could introduce generic equivalents of Xyrem if the generic equivalents do not infringe our existing patents covering Xyrem. Once our orphan drug exclusivity period for Xyrem for the treatment of cataplexy expires in July 2009, prescriptions for Xyrem, or if approved by the FDA, JZP-6, could possibly be filled with generic equivalents that have been approved for the treatment of cataplexy in patients with narcolepsy, even if the patient is diagnosed with excessive daytime sleepiness or FMS. Orphan exclusivity for Antizol for ethylene glycol poisoning expired in 2004 and the orphan exclusivity for Antizol for methanol poisoning will expire in December 2007. Patent protection is not available for the API in most of our products and product candidates, including Xyrem, Luvox CR and JZP-6. Although Xyrem is covered by patents expiring in 2019 with claims covering the formula and process for manufacturing our commercial formulation of Xyrem, it is possible that other companies could manufacture generic equivalents of Xyrem in ways that are not covered by the claims of these patents.

Part of our business strategy includes the ongoing development of proprietary product improvements to Xyrem, including new and enhanced dosage forms. However, we may not be successful in developing or obtaining FDA and other regulatory approvals of these improvements. Although the API in Xyrem and JZP-6 is a DEA scheduled compound for which a quota is required and the FDA has required a risk management program for its distribution, and therefore generic competition may be more difficult and expensive than it might be for other products not requiring a risk management program for distribution, our competitors will not be prevented from introducing a generic equivalent. We have filed a patent application with claims covering the method for distributing sodium oxybate using a centralized distribution system, but we cannot assure you that this patent will issue or, if issued, whether it will provide any significant protection of Xyrem from generic competition.

Luvox CR is covered by a patent application filed by Elan with claims covering the orally administered extended release formulation of fluvoxamine. This patent may not issue, and even if this patent issues, it is possible that other companies could manufacture similar or therapeutically equivalent products in ways that are not covered by the claims of the patent. Further, there may be other patents that we are not aware of that cover some aspect of the Luvox CR formulation and that would prevent launch of the product or require us to pay royalties or other forms of consideration.

After the introduction of a generic competitor, a significant percentage of the prescriptions written for a product generally may be filled with the generic version at the pharmacy, resulting in a loss in sales of the branded product, including for indications for which the generic version has not been approved for marketing by the FDA. Generic competition often results in decreases in the prices at which branded products can be sold. In addition, legislation enacted in the United States allows for, and in a few instances in the absence of specific instructions from the prescribing physician mandates, the use of generic products rather than branded products where a generic equivalent is available. Generic competition for our products earlier than expected could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We may not be able to enter into acceptable agreements to commercialize our products in international markets.

If appropriate regulatory approvals are obtained, we generally intend to commercialize our products in most markets outside of the United States through arrangements with third parties. If we decide to sell our products in markets outside of the United States, we may not be able to enter into any arrangements on acceptable terms, or at all. In addition, these arrangements could result in lower levels of income to us than if we promoted our products directly in international markets. If we choose to market our products directly in markets outside of the United States, we may not be able to develop an effective international sales force. If we fail to enter into marketing arrangements for our products and are unable to develop an effective international sales force, our ability to generate revenues outside of the United States would be limited. In either case, our marketing efforts (and those of our partners) outside of the United States may be subject to regulatory requirements and politico-economic climates that are dissimilar to those in the United States and which could impose unforeseen costs or restrictions on us or our partners.

We may not be able to successfully acquire or in-license additional products or product candidates as part of growing our business.

In order to grow our business, we intend to acquire or in-license additional products and product candidates that we believe have significant commercial potential. Any growth through acquisitions or in-licensing will be dependent upon the continued availability of suitable acquisition or in-license products and product candidates at favorable prices and upon advantageous terms and conditions. Even if such opportunities are present, we may not be able to successfully identify products or product candidates suitable for potential acquisition or in-licensing. Other companies, many of which may have substantially greater financial, marketing and sales resources, compete with us for the right to acquire and in-license such products or product candidates.

We currently have a small sales organization. If we are unable to appropriately expand our specialty sales force and sales organization in the United States to promote additional products, the commercial opportunity for our products may be diminished.

Our sales force is currently comprised of 55 sales professionals. Our potential future commercial products, including Luvox CR and JZP-6, will require an expanded sales force and a significant sales support organization, and we will need to commit significant additional management and other resources to the growth of our sales organization before the commercial launch of those product candidates. We may not be able to achieve the necessary growth in a cost-effective manner or realize a positive return on our investment. We will also have to compete with other pharmaceutical and life sciences companies to recruit, hire, train and retain sales and

marketing personnel. If we elect to rely on third parties to sell our products in the United States, we may receive less revenues or incur more expense than if we sold our products directly. In addition, we may have little or no control over the sales efforts of those third parties. If we are unable to appropriately expand our sales force or collaborate with third parties to sell our products, our ability to generate revenues would be adversely affected.

If we fail to attract and retain key personnel, or to retain our executive management team, we may be unable to successfully develop or commercialize our products.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified personnel and on our ability to develop and maintain important relationships with leading academic institutions, clinicians and scientists. We are highly dependent upon our executive management team. The loss of services of any one or more of our members of executive management team or other key personnel could delay or prevent the successful completion of some of our key activities.

Competition for qualified personnel in the life sciences industry is intense. We will need to hire additional personnel as we expand our development, clinical and commercial activities. We may not be able to attract and retain quality personnel on acceptable terms. We do not carry "key person" insurance. Although the members of our executive management team have employment contracts with us through February 2009, each member of our executive management team and each of our other key employees may terminate his or her employment at any time without notice and without cause or good reason.

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

We are a small company with 185 full-time employees as of January 31, 2007, approximately 35% of whom joined us in the last 12 months. To continue our commercialization and development activities, we will need to expand our employee base for managerial, operations, development, regulatory, sales, marketing, financial and other functions. It is particularly difficult to recruit new employees to the San Francisco Bay Area, where our offices are located, in large part due to high housing costs. If we cannot recruit qualified employees when we need them, our key activities could be delayed. Growth will impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees, particularly with respect to the expansion of our sales and marketing organization and related functions for the potential commercialization of Luvox CR and JZP-6. Our future financial performance and our ability to commercialize our products and to compete effectively will depend, in part, on our ability to manage any growth effectively, and our failure to do so could adversely affect our business, financial condition, results of operations and growth prospects.

Our offices are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could damage our facilities, which could adversely affect our operations.

Our offices are located in the San Francisco Bay Area, near known earthquake fault zones and are therefore vulnerable to damage from earthquake. In October 1989, a major earthquake in our area caused significant property damage and a number of fatalities. We are also vulnerable to damage from other disasters such as power loss, fire, floods and similar events. If a significant disaster occurs, our ability to continue our operations could be seriously impaired and we may not have adequate insurance to cover any resulting losses. Any significant unrecoverable losses could seriously impair our operations and financial conditions.

Risks Related to Our Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our product candidates, their use and the methods used to manufacture them, as well as successfully defending these patents against third party challenges. Our ability to protect our product candidates from unauthorized making, using, selling, offering to sell or importation by third parties is dependent upon the extent to which we have rights under valid and enforceable patents, or have trade secrets that cover these activities.

The patent position of pharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Even if we are able to obtain patents covering our products and product candidates, any patent may be challenged, invalidated, held unenforceable or circumvented. The existence of a patent will not necessarily prevent other companies from developing similar or therapeutically equivalent products or protect us from claims of third parties that our products infringe their issued patents, which may require licensing and the payment of significant fees or royalties. Competitors may successfully challenge our patents, produce similar products that do not infringe our patents, or manufacture products in countries where we have not applied for patent protection or that do not respect our patents. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents, our licensed patents or in third party patents.

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

- others may be able to make products that are similar to our product candidates but that are not covered by the claims of our patents, or for which we are not licensed under our license agreements;
- we or our licensors or partners might not have been the first to make the inventions covered by our issued patents or pending patent applications or the pending patent applications or issued patents of our licensors or partners;
- we or our licensors or partners might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative products without infringing our intellectual property rights;
- our pending patent applications may not result in issued patents;
- our issued patents and the issued patents of our licensors or partners may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges by third parties;
- we may not develop additional proprietary products that are patentable; or
- the patents of others may have an adverse effect on our business.

We also may rely on trade secrets and other unpatented proprietary information to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets and other unpatented proprietary information, our employees, consultants, advisors and partners may unintentionally or willfully disclose our proprietary information to competitors, and we may not have adequate remedies for such disclosures. If our employees, consultants, advisors and partners develop inventions or processes independently,

or jointly with us, that may be applicable to our products under development, disputes may arise about ownership or proprietary rights to those inventions and processes. Enforcing a claim that a third party illegally obtained and is using any of our inventions or trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside of the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

Our research and development collaborators may have rights to publish data and other information to which we have rights. In addition, we sometimes engage individuals or entities to conduct research that may be relevant to our business. While the ability of these individuals or entities to publish or otherwise publicly disclose data and other information generated during the course of their research is subject to contractual limitations, these contractual provisions may be insufficient or inadequate to protect our trade secrets and may impair our patent rights. If we do not apply for patent protection prior to such publication, or if we cannot otherwise maintain the confidentiality of our innovations and other confidential information, then our ability to obtain patent protection or protect our proprietary information may be jeopardized. Moreover, a dispute may arise with our research and development collaborators over the ownership of rights to jointly developed intellectual property. Such disputes, if not successfully resolved, could lead to a loss of rights and possibly prevent us from pursuing certain new products or product candidates.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or commercialize, our products.

Our ability, and that of our partners, to commercialize any approved products will depend, in part, on our ability to obtain patents, enforce those patents and operate without infringing the proprietary rights of third parties. The patent positions of pharmaceutical companies can be highly uncertain and involve complex legal and factual questions. We have filed multiple U.S. patent applications and foreign counterparts, and may file additional U.S. and foreign patent applications related thereto. There can be no assurance that any issued patents we own or control will provide sufficient protection to conduct our business as presently conducted or as proposed to be conducted. Moreover, in part because of prior research performed and patent applications submitted in the same manner or similar fields, there can be no assurance that any patents will issue from the patent applications owned by us, or that we will remain free from infringement claims by third parties.

If we choose to go to court to stop someone else from pursuing the inventions claimed in our patents or in or our licensed patents or those of our partners, that individual or company has the right to ask the court to rule that these patents are invalid and/or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, there is a risk that the court will decide that these patents are not valid and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that the other party's activities do not infringe our rights to these patents or that it is in the public interest to permit the infringing activity.

Furthermore, a third party may claim that we or our manufacturing or commercialization partners are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our products. Patent infringement lawsuits are costly and could affect our results of operations and divert the attention of management and development personnel. There is a risk that a court could decide that we or our partners are infringing third party patent rights. In the event that we or our partners are found to infringe any valid claim of a patent held by a third party, we may, among other things, be required to:

- pay damages, including up to treble damages and the other party's attorneys' fees, which may be substantial;
- cease the development, manufacture, use and sale of our products that infringe the patent rights of others through a court-imposed sanction such as an injunction;

- expend significant resources to redesign our products so that they do not infringe others' patent rights, which may not be possible;
- discontinue manufacturing or other processes incorporating infringing technology; or
- obtain licenses to the infringed intellectual property, which may not be available to us on acceptable terms, or at all.

The pharmaceutical and life sciences industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid or unenforceable and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents in the United States.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, because patent applications in the United States and many foreign jurisdictions are typically not published until 18 months after filing, and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for inventions covered by our licensors' or our issued patents or pending applications, or that we or our licensors were the first inventors. Our competitors may have filed, and may in the future file, patent applications covering subject matter similar to ours. Any such patent application may have priority over our or our licensors' patents or applications and could further require us to obtain rights to issued patents covering such subject matter. If another party has filed a U.S. patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the U.S. Patent and Trademark Office to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful, resulting in a loss of our U.S. patent position with respect to such inventions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

Risks Related to Our Industry

The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our partners from obtaining approvals for the commercialization of some or all of our product candidates.

The research, testing, manufacturing, selling and marketing of pharmaceutical products are subject to extensive regulation by FDA and other regulatory authorities in the United States and other countries, and regulations differ from country to country. Approval in the United States, or in any jurisdiction, does not ensure approval in other jurisdictions. The regulatory approval process is lengthy, expensive and uncertain, and we may be unable to obtain approval for our products. We are not permitted to market our product candidates in the United States until we receive approval from the FDA, generally of an NDA. The NDA must contain, among other things, data to demonstrate that the drug is safe and effective for its intended uses and that it will be manufactured to appropriate quality standards. Obtaining approval of an NDA can be a lengthy, expensive and uncertain process, and the FDA has substantial discretion in the approval process. In addition, failure to comply with FDA and other applicable U.S. and foreign regulatory requirements may subject our company to administrative or judicially imposed sanctions, including warning letters, untitled letters, civil and criminal penalties, injunctions, product seizure or detention, product recalls, total or partial suspension of production and refusal to approve pending NDAs or supplements to approved NDAs. If we are unable to obtain regulatory approval of our product candidates, we will not be able to commercialize them and recoup our research and development costs.

Even if we receive regulatory approval for our product candidates, we will be subject to ongoing significant regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products.

If we receive regulatory approvals to sell our products, the FDA and foreign regulatory authorities may impose significant restrictions on the indicated uses or marketing of our products, or impose requirements for burdensome post-approval study commitments. The terms of any product approval, including labeling, may be more restrictive than we desire and could affect the marketability of the product or otherwise reduce the size of the potential market for that product. Following any regulatory approval of our products, we will be subject to continuing regulatory obligations, such as safety reporting requirements and additional post-marketing obligations, including regulatory oversight of the promotion and marketing of our products. In addition, if the FDA approves any of our product candidates, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. If we become aware of previously unknown problems with any of our products in the United States or overseas or at our contract manufacturers' facilities, a regulatory agency may impose restrictions on our products, our contract manufacturers or on us, including requiring us to reformulate our products, conduct additional clinical trials, make changes in the labeling of our products, implement changes to, or obtain re-approvals of, our contract manufacturers' facilities, or withdraw the product from the market. In addition, we may experience a significant drop in the sales of the affected products and our product revenues and reputation in the marketplace may suffer, and we could become the target of lawsuits, including class action suits. The FDA and other governmental authorities also actively enforce regulations prohibiting promotion of off-label uses and the promotion of products for which marketing approval has not been obtained. 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. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed.

We are also subject to regulation by regional, national, state and local agencies, including the DEA, the Department of Justice, the Federal Trade Commission, the Office of Inspector General of the U.S. Department of Health and Human Services and other regulatory bodies, as well as governmental authorities in those foreign countries in which we commercialize our products. The Federal Food, Drug, and Cosmetic Act, the Public Health Service Act and other federal and state statutes and regulations govern to varying degrees the research, development, manufacturing and commercial activities relating to prescription pharmaceutical products, including preclinical testing, approval, production, labeling, sale, distribution, import, export, post-market surveillance, advertising, dissemination of information and promotion. These statutes and regulations include antikickback statutes and false claims statutes.

The federal health care program antikickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical companies on one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting identified common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from antikickback liability.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Recently, several pharmaceutical and other health care companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be

submitted because of the company's marketing of the product for unapproved, and thus non-reimbursable, uses. The majority of states also have statutes or regulations similar to the federal antikickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a company's products from reimbursement under government programs, criminal fines and imprisonment. Several states now require pharmaceutical companies to report expenses relating to the marketing and promotion of pharmaceutical products and the reporting of gifts to individual physicians in the states. Other states require the posting of information relating to clinical studies. In addition, California requires pharmaceutical companies to implement a comprehensive compliance program that includes a limit on expenditures for or payments to individual prescribers. Currently, several additional states are considering similar proposals. Compliance with these laws is difficult and time consuming and companies that do not comply with these state laws face civil penalties. Because of the breadth of these laws and the narrowness of the safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of such laws. Such a challenge could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

If we or any of our partners fail to comply with applicable regulatory requirements, we or they could be subject to a range of regulatory actions that could affect our or our partners' ability to commercialize our products and could harm or prevent sales of the affected products, or could substantially increase the costs and expenses of commercializing and marketing our products. Any threatened or actual government enforcement action could also generate adverse publicity and require that we devote substantial resources that could otherwise be used in other aspects of our business.

If we fail to comply with our reporting and payment obligations under the Medicaid rebate program or other governmental pricing programs, we could be subject to additional reimbursement requirements, penalties, sanctions and fines which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We participate in the federal Medicaid rebate program established by the Omnibus Budget Reconciliation Act of 1990, as well as several state supplemental rebate programs. Under the Medicaid rebate program, we pay a rebate to each state Medicaid program for our products that are reimbursed by those programs. The minimum amount of the rebate for each unit of product is set by law at 15.1% of the average manufacturing price, or AMP, of that product, or if it is greater, the difference between AMP and the best price we make available to any customer. The rebate amount also includes an inflation adjustment, if necessary.

Pricing and rebate calculations vary among products and programs. The calculations are complex and are often subject to interpretation by us, governmental or regulatory agencies and the courts. The Medicaid rebate amount is computed each quarter based on our submission to the Centers for Medicare & Medicaid Services at the U.S. Department of Health and Human Services of our current AMP and best prices for the quarter. If we become aware that our reporting for prior quarters was incorrect, or changed as a result of recalculation of the pricing data, we are obligated to resubmit the corrected AMP or best price for that quarter. Any corrections to our rebate calculations could result in an overage or underage in our rebate liability for past quarters, depending on the nature of the correction. In addition to retroactive rebates (and interest, if any), if we are found to have knowingly submitted false information to the government, we may be liable for civil monetary penalties in the amount of $100,000 per item of false information. Governmental agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid.

Federal law requires that any company that participates in the Medicaid rebate program extend comparable discounts to qualified purchasers under the Public Health Services, or PHS, pharmaceutical pricing program requiring us to sell our products at prices lower than we otherwise might be able to charge. The PHS pricing program extends discounts comparable to the Medicaid rebates to a variety of community health clinics and other

entities that receive health services grants from the PHS, as well as hospitals that serve a disproportionate share of poor patients and children.

Reimbursement may not be available for our products, which could diminish our sales or affect our ability to sell our products profitably.

In both U.S. and foreign markets, our ability to commercialize our products successfully, and to attract strategic partners for our products, 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. Third party payors decide which drugs they will pay for and establish reimbursement levels. Third party payors are increasingly challenging the prices charged for medical products and services and examining their cost effectiveness, in addition to their safety and efficacy. In some cases, for example, third party payors try to encourage the use of less expensive generic products through their prescription benefits coverage and reimbursement policies. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the cost-effectiveness of our products. Even with studies, our products may be considered less safe, less effective or less cost-effective than existing products, and third party payors may not provide coverage and reimbursement for our products, in whole or in part. We cannot predict actions third party payors may take, or whether they will limit the coverage and level of reimbursement for our products or refuse to provide any coverage at all. For example, because Luvox CR will compete in a market with both branded and generic products, reimbursement by government and private payors may be more challenging than for new chemical entities. We cannot be sure that reimbursement amounts will not reduce the demand for, or the price of, our products. If reimbursement is not available or is available only to limited levels, we may not be able to effectively commercialize our products.

There have been a number of legislative and regulatory proposals in recent years to change the healthcare system in ways that could impact our ability to sell our products profitably. These proposals include prescription drug benefit proposals for Medicare beneficiaries and measures that would limit or prohibit payments for some medical treatments or subject the pricing of drugs to government control. For example, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or MMA, provides a new Medicare prescription drug benefit, that became effective in January 2006, and mandates other reforms. Although we cannot predict the full effect on our business of the implementation of this new legislation, it is possible that the new benefit, which is managed by private health insurers, pharmacy benefit managers and other managed care organizations, will result in decreased reimbursement for prescription drugs, which may further exacerbate industry-wide pressure to reduce the prices charged for prescription drugs. This could harm our ability to market our products and generate revenues. Currently, there are legislative proposals that would permit the U.S. Secretary of Health and Human Services to negotiate directly with pharmaceutical companies to obtain lower prices for drugs covered under Medicare Part D.

We expect to experience pricing pressures in connection with the sale of our products due to the trend toward managed health care, the increasing influence of health maintenance organizations and additional legislative proposals. If we fail to successfully secure and maintain reimbursement coverage for our products or are significantly delayed in doing so, we will have difficulty achieving market acceptance of our products and our business will be harmed.

Sales of our products in the United States may be adversely affected by consolidation among wholesale drug distributors and the growth of large retail drug store chains.

The market participants to whom we sell Antizol, and to whom we expect to sell most of our future products, including Luvox CR, have undergone significant consolidation, marked by mergers and acquisitions among wholesale distributors and the growth of large retail drugstore chains. As a result, a small number of large wholesale distributors control a significant share of the market, and the number of independent drug stores and small drugstore chains has decreased. In addition, excess inventory levels held by large distributors can lead to

periodic and unanticipated reductions in our revenues and cash flows. Consolidation of drug wholesalers and retailers, as well as any increased pricing pressure that those entities face from their customers, including the U.S. government, may increase pricing pressure and place other competitive pressures on drug manufacturers, including us.

Prescription drug importation from Canada and other countries could increase pricing pressure on our products and could decrease our revenues and profit margins.

Under current U.S. law, there is a general prohibition on imports of unapproved products. The FDA has published internal guidance that sets forth the agency's enforcement priorities for imported drugs. Under this policy, the FDA allows its personnel to use their discretion in permitting entry into the United States of personal use quantities of FDA-regulated products in personal baggage and mail when the product does not present an unreasonable risk to the user. Thus, individuals may import prescription drugs that are unavailable in the United States from Canada and other countries for their personal use under specified circumstances. Other imports, although illegal under U.S. law, also enter the country as a result of the resource constraints and enforcement priorities of the FDA and the U.S. Customs Services. In addition, the MMA will permit pharmacists and wholesalers to import prescription drugs into the United States from Canada under specified circumstances. These additional import provisions will not take effect until the Secretary of Health and Human Services makes a required certification regarding the safety and cost savings of imported drugs and the FDA has promulgated regulations setting forth parameters for importation. These conditions have not been met to date and the law has therefore not taken effect. However, legislative proposals have been introduced to remove these conditions and implement changes to the current import laws, or to create other changes that would allow foreign versions of our products priced at lower levels than in the United States to be imported or reimported to the United States from Canada, Europe and other countries. If these provisions take effect, the volume of prescription drug imports from Canada and elsewhere could increase significantly and our products could face competition from lower priced imports.

Even if these provisions do not take effect and alter current law, the volume of prescription drug imports from Canada and elsewhere could increase due to a variety of factors, including the further spread of internet pharmacies and actions by a number of state and local governments to facilitate Canadian and other imports. These imports may harm our business.

We recently licensed Xyrem to Valeant to distribute in Canada. Due to government price regulation in Canada, products are generally sold in Canada for lower prices than in the United States. Due to the risk management program for Xyrem and our agreement with Valeant, we believe that it is unlikely that Xyrem will be imported from Canada to the United States.

Product liability and product recalls could harm our business.

The development, manufacture, testing, marketing and sale of pharmaceutical products entail significant risk of product liability claims or recalls. Our products and product candidates are designed to affect important bodily functions and processes. Side effects of, or manufacturing defects in, the products sold by us could result in exacerbation of a patient's condition, further deterioration of a patient's condition or even death. This could result in product liability claims and/or recalls of one or more of our products. For example, studies and publications suggest that selective serotonin reuptake inhibitors, or SSRIs, including the API in Luvox CR and its immediate release formulation Luvox, may increase the risk of suicidal behavior in adults and adolescents. In addition, the current SSRI products used to treat OCD and SAD, particularly those formulated for immediate release, all have significant adverse side effects. Side effects associated with SSRIs include sexual dysfunction, adverse drug interaction and risk of hypertension. Claims may be brought by individuals seeking relief for themselves or by groups seeking to represent a class. While we have not had to defend against any product liability claims to date, as sales of our products increase, we believe that it is likely product liability claims will be made against us. We cannot predict the frequency, outcome or cost to defend any such claims.

Product liability insurance coverage is expensive, can be difficult to obtain and may not be available in the future on acceptable terms, if at all. Partly as a result of product liability lawsuits related to pharmaceutical products, product liability and other types of insurance have become more difficult and costly for pharmaceutical companies to obtain. Our product liability insurance may not cover all of the future liabilities we might incur in connection with the development, manufacture or sale of our products. In addition, we may not continue to be able to obtain insurance on satisfactory terms or in adequate amounts.

A successful claim or claims brought against us in excess of available insurance coverage could subject us to significant liabilities and could have a material adverse effect on our business, financial condition, results of operations and growth prospects. Such claims could also harm our reputation and the reputation of our products, adversely affecting our ability to market our products successfully. In addition, defending a product liability lawsuit is expensive and can divert the attention of key employees from operating our business.

Product recalls may be issued at our discretion or at the discretion of our suppliers, the FDA, other government agencies and other entities that have regulatory authority for pharmaceutical sales. Any recall of our products could materially adversely affect our business by rendering us unable to sell that product for some time and by adversely affecting our reputation.

Risks Relating to Our Financial Condition

We have a history of net losses, which we expect to continue for at least several years and, as a result, we are unable to predict the extent of any future losses or when, if ever, we will become profitable.

We have a limited operating history and have incurred significant net losses since our inception in 2003, and we expect to continue to incur net losses for the next several years. Our net loss for the year ended December 31, 2006 was $59.4 million, and we had an accumulated deficit of $177.6 million at December 31, 2006. We expect our operating expenses to increase over the next several years as we develop additional products, acquire or in-license additional products, expand clinical trials for our product candidates currently in clinical development, expand our research and development activities, seek regulatory approvals and engage in commercialization preparation activities in anticipation of potential FDA approval of our product candidates. We will need to expand our commercial organization to launch additional products. It is very expensive to launch a product, and many expenses are incurred before revenues are received. We are unable to predict the extent of any future losses or when we will become profitable, if at all.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. If we are unable to achieve and sustain profitability, the market value of our common stock will likely decline.

Our operations have generated negative cash flows, and if we are unable to secure additional funding, we may be required to reduce operations.

As of December 31, 2006, we had approximately $78.9 million in cash, cash equivalents and marketable securities. During 2006, our cash flows used in operations were approximately $57.3 million. Substantially all of our $43.3 million in net product sales during 2006 resulted from sales of Xyrem and Antizol. Sales of either or both products could decrease due to adverse market conditions, introduction of generic products, negative publicity or other events outside our control. We must commit substantial resources to costly and time-consuming research, preclinical testing and clinical trials of our product candidates and significant funds to our commercial operations. While we believe that our current cash, cash equivalents and marketable securities and the anticipated net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months, we expect to raise additional funds within this period of time through development financings, collaborations or public or private debt or equity financings. We have based this estimate on assumptions that may prove to be wrong, and

we could utilize our available financial resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

- the amount of sales and other revenues from our commercial products, including selling prices for products that we may begin selling and price increases for our current products;
- market acceptance of and the number of prescriptions written for our products;
- selling and marketing costs associated with Luvox CR and Xyrem in the United States, including the cost and timing of expanding our marketing and sales capabilities;
- revenues from current and potential future development and/or commercial collaboration partners;
- the scope, rate of progress, results and costs of our preclinical studies, clinical trials and other research and development activities;
- the number and characteristics of product candidates that we pursue;
- the cost and timing of establishing clinical and commercial supplies of our product candidates;
- the cost and timing of obtaining regulatory approval;
- payments of milestones to third parties;
- increased expenses associated with new employees hired to support our continued growth;
- the cost of investigations, litigation and/or settlements related to regulatory activities, in particular the ongoing investigation by the U.S. Attorney for the Eastern District of New York;
- the cost of preparing, filing, prosecuting, defending and enforcing patent claims and other intellectual property rights; and
- the extent to which we acquire, in-license or invest in new businesses, products or product candidates.

Although we generate product revenues, since our inception in 2003 we have financed our operations primarily through the sale of convertible preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates and our collaboration with UCB related to Xyrem and JZP-6. In addition, our audit report in our 2006 consolidated financial statements contains an explanatory paragraph stating that our recurring losses from operations and cash used in operating activities raise substantial doubt about our ability to continue as a going concern. We believe that the successful completion of this offering will eliminate this doubt and enable us to continue as a going concern; however, if we are unable to successfully complete this offering, we will need to execute alternative financing or operational plans to continue as a going concern.

Even if the offering is successful, we will need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, or at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations. We may also be required to license to third parties products and product candidates that we would prefer to develop and commercialize ourselves. We may seek to raise additional funds through development financings, collaborations, or public or private debt or equity financings. If we raise funds through collaborations, we may be required to relinquish, on terms that are not favorable to us, rights to some of our products or product candidates that we would otherwise seek to develop or commercialize ourselves. If we raise additional funds through the issuance of debt securities, these securities could have rights that are senior to holders of our common stock and could contain covenants that restrict our operations. Any additional equity financing may be dilutive to our stockholders. In addition, if we raise additional funds through the sale of equity securities, new investors could have rights superior to our existing stockholders. The terms of future financings may restrict our ability to raise additional capital, which could delay or prevent the further development or commercialization or our products. Our failure to raise capital when needed may harm our business and operating results.

We have a substantial amount of debt, which may adversely affect our cash flows and our ability to operate our business.

As of December 31, 2006, we had total indebtedness of $82.2 million at face value, substantially all of which we incurred in connection with our acquisition of Orphan Medical. Our substantial debt combined with our other financial obligations and contractual commitments could have other important consequences. For example, it could:

- make us more vulnerable to adverse changes in general economic, industry and competitive conditions and adverse changes in government regulation;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flows to fund working capital, capital expenditures, acquisitions and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- place us at a competitive disadvantage compared to our competitors that have less debt; and
- limit our ability to borrow additional amounts for working capital, capital expenditures, acquisitions, debt service requirements, execution of our business strategy or other purposes.

Any of these factors could materially adversely affect our business, financial condition, results of operations and growth prospects. In addition, under specified circumstances, our lenders could demand repayment of all of our debt, which would have a material adverse effect on our business, financial condition and results of operations. If we do not have sufficient earnings to service our debt, we may be required to refinance all or part of our existing debt, sell assets, borrow more money or sell securities, none of which we can assure you that we would be able to do in a timely manner or at all.

The terms of our debt could restrict our operations, particularly our ability to respond to changes in our business or to take specified actions.

Our existing senior secured debt contains, and any future indebtedness would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions on us, including restrictions on our ability to take actions that may be in our best interests. Our existing debt includes covenants, including requirements that we:

- generally not borrow additional amounts without the approval of our lenders;
- dispose of assets acquired in the Orphan Medical acquisition only in accordance with the terms of our existing senior secured debt;
- not impair our lenders' security interests in our assets; and
- maintain minimum cash balances.

Risks Relating to this Offering and Ownership of Our Common Stock

The market price of our common stock may be volatile, and the value of your investment could decline significantly.

Investors who purchase our common stock in this offering may not be able to sell their shares at or above the initial public offering price. Security prices for companies similar to us experience significant price and volume fluctuations. The following factors, in addition to other risks described in this prospectus, may have a significant effect on our common stock market price:

- the success of our development efforts and clinical trials;
- announcement of FDA approval or non-approval of our product candidates, or specific label indications for their use, or delays in the FDA review process;

- actual or expected fluctuations in our operating results, including as a result of fluctuating demand for our commercial products as a result of purchases by wholesalers in connection with product launches, stockpiling or inventory drawdowns by our customers, or otherwise;
- changes in the market prices for our products;
- the success of our efforts to acquire or in-license additional products or product candidates;
- introductions and announcements of new products by us, our commercialization partners, or our competitors, and the timing of these introductions or announcements;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- announcements of product innovations by us, our partners or our competitors;
- changes in laws or regulations applicable to our products, including but not limited to clinical trial requirements;
- actions taken by regulatory agencies with respect to our products, clinical trials, manufacturing process or sales and marketing terms;
- developments concerning our collaborations, including but not limited to those with our sources of manufacturing supply and our commercialization partners;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our products;
- our ability or inability to raise additional capital and the terms on which we raise it;
- actual or anticipated changes in earnings estimates or changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally;
- conditions or trends in the pharmaceutical industry, the financial markets or the economy in general;
- the outcome of, and any expenses related to, the U.S. government investigation of the promotion of Xyrem;
- actual or expected changes in our growth rates or our competitors' growth rates;
- changes in the market valuation of similar companies;
- trading volume of our common stock; and
- sales of our common stock by us or our stockholders.

In addition, the stock market in general and the market for life sciences companies in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market, securities class-action litigation has often been instituted against companies. Such litigation, if instituted against us, could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

Future sales of our common stock in the public market could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market after this offering, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. After this offering, we will have shares of common stock outstanding, or shares if the underwriters exercise their over-allotment option in full.

All of the shares of common stock sold in this offering will be freely tradable without restrictions or further registration under the Securities Act of 1933, as amended, except for any shares purchased by our affiliates as defined in Rule 144 under the Securities Act of 1933, as amended. The remaining 205,243,938 shares of common stock outstanding after this offering, based on shares outstanding as of December 31, 2006, plus an additional 17,677,564 shares issuable upon the exercise of outstanding options and 8,695,652 shares issuable upon the exercise of outstanding warrants, will be available for sale after the expiration of the contractual lock-up period, subject to volume limitations under Rule 144 under the Securities Act of 1933, as amended. Morgan Stanley & Co. Incorporated and Lehman Brothers Inc., may, in their sole discretion, release all or some portion of the shares subject to lock-up agreements prior to expiration of the lock-up period. See "Shares Eligible for Future Sale."

After this offering, the holders of approximately 213,661,357 shares of common stock based on shares outstanding as of December 31, 2006, including 8,695,652 shares underlying outstanding warrants, will be entitled to rights with respect to registration of such shares under the Securities Act of 1933, as amended. In addition, upon exercise of outstanding options by our executive officers, our executive officers will be entitled to rights with respect to registration of the shares of common stock acquired on exercise. If such holders, by exercising their registration rights, sell a large number of shares, they could adversely affect the market price for our common stock. If we file a registration statement and include shares held by these holders pursuant to the exercise of their registration rights, these sales may impair our ability to raise capital. In addition, prior to the consummation of this offering, we intend to file a registration statement on Form S-8 under Securities Act to register up to shares of our common stock for issuance under our stock option and employee stock purchase plans.

Our principal stockholders and management own a significant percentage of our stock and will be able to exercise significant influence over matters subject to stockholder approval.

Our executive officers, directors and principal stockholders, together with their respective affiliates, beneficially owned approximately 83.4% of our capital stock as of January 31, 2007, and we expect that upon completion of this offering they will continue to hold a significant portion of our outstanding capital stock. Accordingly, after this offering, our executive officers, directors and principal stockholders will be able to determine the composition of our board of directors, retain the voting power to approve all matters requiring stockholder approval, including mergers and other business combinations, and continue to have significant influence over our operations. This concentration of ownership could have the effect of delaying or preventing a change in our control or otherwise discouraging a potential acquirer from attempting to obtain control of us, which in turn could have a material adverse effect on the market value of our common stock.

We will incur significant increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002, and rules of the Securities and Exchange Commission and the NASDAQ Stock Market, have imposed various requirements on public companies including requiring establishment and maintenance of effective disclosure and financial controls. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, 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.

The Sarbanes-Oxley Act of 2002 requires, among other things, that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, we must perform system and process evaluation and testing of our internal control over financial reporting to allow management and our independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting, as

required by Section 404 of the Sarbanes-Oxley Act, beginning with our annual report on Form 10-K for the fiscal year ended December 31, 2008. Our compliance with Section 404 of the Sarbanes-Oxley Act will require that we incur substantial accounting expense and expend significant management efforts. 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. If we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by NASDAQ, the SEC or other regulatory authorities, which would require additional financial and management resources.

Our ability to successfully implement our business plan and comply with Section 404 requires us to be able to prepare timely and accurate financial statements. We expect that we will need to continue to improve existing, and implement new operational and financial systems, procedures and controls to manage our business effectively. Any delay in the implementation of, or disruption in the transition to, new or enhanced systems, procedures or controls, may cause our operations to suffer and we may be unable to conclude that our internal control over financial reporting is effective and to obtain an unqualified report on internal controls from our auditors as required under Section 404 of the Sarbanes-Oxley Act. This, in turn, could have an adverse impact on trading prices for our common stock, and could adversely affect our ability to access the capital markets.

We have broad discretion to use the net proceeds from this offering and our investment of these proceeds may not yield a favorable return. We may invest the proceeds of this offering in ways you disagree with.

Our management has broad discretion as to how to spend and invest the proceeds from this offering and we may spend or invest these proceeds in a way with which our stockholders may disagree. Accordingly, you will need to rely on our judgment with respect to the use of these proceeds. We plan to invest the net proceeds of this offering in short-term, investment-grade, interest bearing securities. These investments may not yield a favorable return to our stockholders.

If we acquire or in-license products or product candidates, or acquire companies that we believe are complementary to our business, the process of integrating the acquired or in-licensed products or product candidates, or acquired companies may result in unforeseen difficulties and expenditures, and may require significant management attention that would otherwise be devoted to our existing business and products. We could fail to realize the anticipated benefits of any acquisition or in-licensing arrangement. Future acquisitions could reduce your percentage of ownership of us or the value of your common stock and could cause us to incur debt and expose us to liabilities.

An active trading market for our common stock may not develop.

Prior to this offering, there has been no public market for our common stock. Although we expect that our common stock will be approved for listing on the NASDAQ Global Market, an active trading market for our shares may never develop or be sustained following this offering. The initial public offering price for our common stock was determined through negotiations with the underwriters, and the negotiated price may not be indicative of the market price of the common stock after the offering. This initial public offering price may vary from the market price of our common stock after the offering. As a result of these and other factors, you may be unable to resell your shares of our common stock at or above the initial public offering price.

Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders.

Provisions in our certificate of incorporation and bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us, even if doing so would benefit our stockholders. These provisions include:

- authorizing the issuance of "blank check" preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- dividing our board of directors into three classes;
- limiting the removal of directors by the stockholders;
- eliminating cumulative voting rights and therefore allowing the holders of a majority of the shares of our common stock to elect all of the directors standing for election, if they should so choose;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- eliminating the ability of stockholders to call a special meeting of stockholders; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with an interested stockholder for a period of three years following the date on which the stockholder became an interested stockholder, unless such transactions are approved by our board of directors. This provision could have the effect of delaying or preventing a change of control, whether or not it is desired by or beneficial to our stockholders.

We have never declared or paid dividends on our capital stock and we do not anticipate paying dividends in the foreseeable future.

Our business requires significant funding, and we currently invest more in product development than we earn from sales of our products. In addition, the agreements governing our debt restrict our ability to pay dividends on our common stock. Therefore, we do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently plan to invest all available funds and future earnings in the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be your sole source of potential gain for the foreseeable future.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements under "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" and elsewhere in this prospectus contain forward-looking statements. In some cases, you can identify forward-looking statements by the following words: "may," "will," "could," "would," "should," "expect," "intend," "plan," "anticipate," "believe," "estimate," "predict," "project," "potential," "continue," "ongoing" or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These statements involve risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Although we believe that we have a reasonable basis for each forward-looking statement contained in this prospectus, we caution you that these statements are based on a combination of facts and factors currently known by us and our projections of the future, about which we cannot be certain. Many important factors affect our ability to achieve our objectives, including:

- the success and timing of our product development activities and clinical trials;
- our ability to obtain and maintain regulatory approval of our product candidates;
- the size and growth potential of the markets for our products, and our ability to serve those markets;
- our ability to successfully commercialize our products;
- the successful development and expansion of our specialty sales force and commercial organization;
- the rate and degree of market acceptance of our current products;
- the performance of our single source suppliers and manufacturers;
- the success of competing branded and generic drugs;
- our ability to identify, develop, acquire and in-license new products and product candidates and to attract appropriate collaboration partners;
- the loss of key personnel;
- regulatory developments in the United States and foreign countries;
- our use of the proceeds from this offering;
- the accuracy of our estimates regarding revenues, expenses, capital requirements and needs for additional financing, and our ability to obtain additional financing; and
- our ability to obtain and maintain intellectual property protection for our products.

In addition, you should refer to the "Risk Factors" section of this prospectus for a discussion of other important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this prospectus will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. The Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933 do not protect any forward-looking statements that we make in connection with this offering.

USE OF PROCEEDS

We estimate that the net proceeds from the sale of the shares of our common stock in this offering will be approximately $ million, or approximately $ million if the underwriters exercise their over-allotment option in full, based upon an assumed initial public offering price of $ per share, the mid-point of the range reflected on the cover page of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses. Each $ increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same. We may also increase or decrease the number of shares we are offering. Each increase of million shares in the number of shares offered by us, together with a concomitant $ increase in the assumed initial public offering price of $ per share, would increase the net proceeds to us from this offering by approximately $ million. Similarly, each decrease of million shares in the number of shares offered by us, together with a concomitant $ decrease in the assumed initial public offering price of $ per share, would decrease the net proceeds to us from this offering by approximately $ million. We do not expect that a change in the offering price or the number of shares by these amounts would have a material effect on our uses of the proceeds from this offering, although it may impact the amount of time prior to which we will need to seek additional capital.

We currently expect to use the net proceeds from this offering as follows:

- approximately $ million to fund the planned launch and commercialization of Luvox CR, including development and commercial milestone payments to Solvay, activities related to our preparation for marketing and promotion, expansion of our specialty sales force and production of commercial quantities of Luvox CR;
- approximately $ million to fund our Phase III pivotal clinical trials of JZP-6;
- approximately $ million to fund continued development and feasibility activities related to our portfolio of clinical and early-stage product candidates; and
- the remainder to fund working capital, capital expenditures and other general corporate purposes.

We may also use a portion of the proceeds for the potential acquisition or in-licensing of, or investment in, products, product candidates, or companies that complement our business, although we have no current understandings, commitments or agreements to do so.

The expected use of net proceeds of this offering represents our current intentions based upon our present plans and business conditions. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to be received upon the closing of this offering. Accordingly, our management will have broad discretion in the application of the net proceeds, and investors will be relying on the judgment of our management regarding the application of the proceeds of this offering.

The amount and timing of our expenditures will depend on several factors, including whether and when we obtain regulatory approval of Luvox CR, the success of our research and development programs and clinical trials, expenditures to acquire or in-license additional products or product candidates, our ability to establish and maintain collaborative arrangements that reduce our expenses, resolution of and expenses associated with the U.S. Attorney's Office investigation of Orphan Medical's promotion of Xyrem, future sales growth, cash generated from future operations and actual expenses to operate our business. Pending their uses, we plan to invest the net proceeds of this offering in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

While we believe that our current cash, cash equivalents and marketable securities and the net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties

and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months, we expect to raise additional funds within this period of time through development financings, collaborations, or public or private debt or equity financings. In addition, we do not expect that our existing capital resources and the net proceeds from this offering will be sufficient to enable us to fund the completion of the development of our current product candidates, and we will need to raise substantial additional capital to fund our operations and to continue to develop our product portfolio, acquire or in-license additional products and product candidates, and launch and market our products.

DIVIDEND POLICY

We have never declared or paid any dividends on our common stock or any other securities. We anticipate that we will retain all of our future earnings, if any, for use in the expansion and operation of our business and do not anticipate paying cash dividends in the foreseeable future. In addition, the agreements covering our debt restrict our ability to pay dividends on our common stock. Any future determination relating to our dividend policy will be made at the discretion of our board of directors, based on our financial condition, results of operation, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and capitalization as of December 31, 2006:

- on an actual basis; and
- on a pro forma as adjusted basis to reflect:
  - the conversion of all of our outstanding shares of preferred stock into 198,338,205 shares of common stock immediately prior to the closing of this offering and the reclassification of preferred stock warrant liability to additional paid-in capital upon conversion of the preferred stock underlying warrants to common stock; and
  - the sale of shares of common stock in this offering at an assumed initial offering price of $ per share, the mid-point of the range reflected on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses.

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

	As of December 31, 2006	
	Actual	Pro Forma As Adjusted(1)
	(In thousands, except share data)	(Unaudited)
Cash and cash equivalents	$ 78,948	$
Senior secured notes (including $51,998 as of December 31, 2006 held by related parties)	74,283	74,283
Preferred stock warrant liability (including $5,965 as of December 31, 2006 held by related parties)	8,521	—
Convertible preferred stock, $.0001 par value, issuable in series, 308,236,575 shares authorized, 198,338,205 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma as adjusted.	263,852	—
Common stock subject to repurchase	8,183	8,183
Stockholders' equity (deficit):		
Preferred stock, $.0001 par value, no shares authorized, issued and outstanding, actual; shares authorized, no shares issued and outstanding, pro forma as adjusted.	—	—
Common stock, $.0001 par value, 252,716,057 shares authorized, 6,905,733 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma as adjusted	—	
Additional paid-in capital	1,335	
Accumulated other comprehensive income	12	
Accumulated deficit	(177,643)	
Total stockholders' equity (deficit)	(176,296)	
Total capitalization	$ 178,543	$

(1) Each $ increase (decrease) in the assumed initial public offering price of $ per share, the mid-point of the range reflected on the cover page of this prospectus, would increase (decrease) each of additional paid-in capital, total stockholders' equity (deficit) 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 underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase of million shares in the number of

shares offered by us, together with a concomitant $ increase in the assumed initial public offering price of $ per share, would increase each of additional paid-in capital, total stockholders' equity (deficit) and total capitalization by approximately $ million. Similarly, each decrease of million shares in the number of shares offered by us, together with a concomitant $ decrease in the assumed initial public offering price of $ per share, would decrease each of additional paid-in capital, total stockholders' equity (deficit) and total capitalization by approximately $ million. The as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

The outstanding share information in the table above excludes as of December 31, 2006:

- 17,677,564 shares of common stock issuable upon the exercise of outstanding options with a weighted average exercise price of $1.95 per share;
- 5,378,732 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan as of December 31, 2006; provided, however, that immediately upon the signing of the underwriting agreement for this offering, our 2003 Equity Incentive Plan will terminate so that no further awards may be granted under our 2003 Equity Incentive Plan;
- an aggregate of shares of common stock reserved for future issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan, each of which will become effective immediately upon the signing of the underwriting agreement for this offering; and
- 8,695,652 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $1.84 per share.

We expect to complete a -for- reverse stock split of our common stock and preferred stock before the closing of this offering. All share and per share amounts, other than the shares authorized, have been retroactively adjusted to give effect to this stock split.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share and the pro forma net tangible book value per share of our common stock after this offering. Historical net tangible book value per share is determined by dividing our total tangible assets (total assets less intangible assets), less total liabilities, convertible preferred stock and common stock subject to repurchase, by the number of outstanding shares of our common stock. As of December 31, 2006, we had a historical net tangible book value (deficit) of our common stock of $(283.6) million, or approximately $(41.07) per share. The pro forma net tangible book value (deficit) of our common stock as of December 31, 2006 was approximately $(11.3) million, or approximately $(0.05) per share, based on the number of shares of common stock outstanding as of December 31, 2006, after giving effect to the conversion of all outstanding convertible preferred stock into shares of common stock and the reclassification of the preferred stock warranty liability to equity immediately prior to the closing of this offering.

Investors participating in this offering will incur immediate, substantial dilution. After giving effect to the sale of common stock offered in this offering at an assumed initial public offering price of $ per share, the mid-point of the range reflected on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of December 31, 2006 would have been approximately $ million, or approximately $ per share of common stock. This represents an immediate increase in pro forma as adjusted net tangible book value of $ per share to existing stockholders, and an immediate dilution of $ per share to investors participating in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share		$
Historical net tangible book value (deficit) per share as of December 31, 2006	$(41.07)	
Pro forma increase in net tangible book value per share attributable to conversion of convertible preferred stock	41.02	
Pro forma net tangible book value (deficit) per share before this offering	$ (0.05)	
Pro forma increase in net tangible book value per share attributable to investors participating in this offering		
Pro forma as adjusted net tangible book value (deficit) per share after this offering		
Pro forma dilution per share to investors participating in this offering		$

Each $ increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) our pro forma as adjusted net tangible book value (deficit) by approximately $ million, or approximately $ per share, and the pro forma dilution per share to investors in this offering by approximately $ per share, 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 underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase of million shares in the number of shares offered by us, together with a concomitant $ increase in the assumed initial public offering price of $ per share, would increase our pro forma as adjusted net tangible book value (deficit) by approximately $ million, or $ per share, and the pro forma dilution per share to investors in this offering by $ per share. Similarly, a decrease of million shares in the number of shares offered by us, together with a concomitant $ decrease in the assumed initial public offering price of $ per share, would decrease our pro forma as adjusted net tangible book value (deficit) by approximately $ million, or $ per share, and the pro forma dilution per share to investors in this offering by $ per share. The pro forma as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

If the underwriters exercise their option in full to purchase additional shares of common stock in this offering, the pro forma as adjusted net tangible book value per share after the offering would be $ per share, the increase in the pro forma net tangible book value per share to existing stockholders would be $ per share and the pro forma dilution to new investors purchasing common stock in this offering would be $ per share.

The following table summarizes, on a pro forma basis as of December 31, 2006, the differences between the number of shares of common stock purchased from us, the total consideration and the weighted average price per share paid by existing stockholders and by investors participating in this offering at an assumed initial public offering price of $ per share, before deducting underwriting discounts and commissions and estimated offering expenses:

	Shares Purchased		Total Consideration		Weighted Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders before this offering		%	$	%	$
Investors participating in this offering					
Total		100%	$	100%	$

The above discussion and tables are based on 6,905,733 shares of common stock outstanding as of December 31, 2006. This number excludes, as of December 31, 2006:

- 17,677,564 shares of common stock issuable upon the exercise of outstanding options with a weighted average exercise price of $1.95 per share;
- 5,378,732 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan; provided, however, that immediately upon the signing of the underwriting agreement for this offering, our 2003 Equity Incentive Plan will terminate so that no further awards may be granted under our 2003 Equity Incentive Plan;
- an aggregate of shares of common stock reserved for future issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan, each of which will become effective immediately upon the signing of the underwriting agreement for this offering; and
- 8,695,652 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $1.84 per share.

The following table summarizes, on a pro forma basis as of December 31, 2006, after giving effect to the inclusion of 687,536 shares of common stock subject to our right of repurchase and the exercise of all stock options and warrants outstanding as of December 31, 2006, the differences between the number of shares of common stock purchased from us, the total consideration and the weighted average price per share paid by existing stockholders and by investors participating in this offering at an assumed initial public offering price of $ per share, before deducting underwriting discounts and commissions and estimated offering expenses:

	Shares Purchased		Total Consideration		Weighted Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders before this offering		%	$	%	$
Investors participating in this offering					
Total		100%	$	100%	$

The number of shares of common stock outstanding in the table above is based on the pro forma number of shares outstanding as of December 31, 2006 and assumes no exercise of the underwriters' option to purchase additional shares. If the underwriters' option to purchase additional shares is exercised in full, the number of shares of common stock held by existing stockholders will be reduced to % of the total number of shares of common stock to be outstanding after this offering, and the number of shares of common stock held by investors participating in this offering will be increased to shares or % of the total number of shares of common stock to be outstanding after this offering.

Effective upon the closing of this offering, an aggregate of shares of our common stock will be reserved for future issuance under our equity benefit plans, and these share reserves will also be subject to automatic annual increases in accordance with the terms of the plans. To the extent that new options are issued under our equity benefit plans or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read together with our consolidated financial statements and accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this prospectus. The selected consolidated financial data in this section is not intended to replace our consolidated financial statements and the accompanying notes. Our historical results are not necessarily indicative of our future results.

The selected consolidated statements of operations data for the period from March 20, 2003 (date of inception) through December 31, 2003 and the selected consolidated balance sheet data as of December 31, 2003 and 2004 are derived from our audited consolidated financial statements not included in this prospectus. We derived the consolidated statements of operations data for the years ended December 31, 2004, 2005 and 2006 and the consolidated balance sheet data as of December 31, 2005 and 2006 from our audited consolidated financial statements appearing elsewhere in this prospectus.

	Period from March 20, 2003 (Inception) through December 31, 2003	Year Ended December 31,		
		2004	2005(1)	2006(2)
	(In thousands, except per share data)			
Consolidated Statements of Operations Data:				
Revenues:				
Product sales, net	$ —	$ —	$ 18,796	$ 43,299
Royalties, net	—	—	146	594
Contract revenues	—	—	2,500	963
Total revenues	—	—	21,442	44,856
Operating expenses:				
Cost of product sales	—	—	4,292	6,968
Research and development	—	17,988	45,783	54,956
Selling, general and administrative	2,538	7,459	23,551	51,384
Amortization of intangible assets	—	—	4,960	9,600
Purchased in-process research and development	—	—	21,300	—
Total operating expenses	2,538	25,447	99,886	122,908
Loss from operations	(2,538)	(25,447)	(78,444)	(78,052)
Interest income	10	643	1,318	2,307
Interest expense (including $4,595 and $9,024 for the years ended December 31, 2005 and 2006, respectively, pertaining to related parties)	—	—	(7,129)	(14,129)
Other expense	—	—	(901)	(1,109)
Gain on extinguishment of development financing obligation	—	—	—	31,592
Net loss	(2,528)	(24,804)	(85,156)	(59,391)
Beneficial conversion feature	—	—	—	(21,920)
Loss attributable to common stockholders	$ (2,528)	$ (24,804)	$ (85,156)	$ (81,311)
Loss attributable to common stockholders per share, basic and diluted	$ (7.41)	$ (137.80)	$ (1,216.51)	$ (572.61)
Weighted-average shares used in computing loss per share attributable to common stockholders, basic and diluted	341	180	70	142
Pro forma loss attributable to common stockholders per share, basic and diluted (unaudited)(3)				$
Pro-forma weighted-average shares used in computing loss per share attributable to common stockholders, basic and diluted (unaudited)(3)				

(1) We acquired Orphan Medical, Inc. on June 24, 2005 and the results of Orphan Medical are included in the consolidated financial statements from that date.
(2) Operating expenses include stock-based compensation expense of $3.5 million of which $8,000, $661,000 and $2.8 million were charged to cost of product sales, research and development and selling, general and administrative expense, respectively.
(3) Assumes the conversion of all outstanding shares of convertible preferred stock outstanding as of December 31, 2006 into common stock.

	As of December 31,			
	2003	2004	2005	2006
	(In thousands)			
Consolidated Balance Sheet Data:				
Cash and cash equivalents	$ 4,460	$ 33,678	$ 20,614	$ 78,948
Working capital	4,488	36,663	8,048	61,043
Total assets	4,900	42,850	164,781	214,571
Senior secured notes (including $50,620 and $51,998 as of December 31, 2005 and 2006, respectively, held by related to related parties)	—	—	73,629	74,283
Convertible preferred stock	7,076	64,009	163,862	263,852
Common stock subject to repurchase	—	3,665	5,924	8,183
Accumulated deficit	(2,528)	(27,332)	(118,252)	(177,643)
Total stockholders' equity (deficit)	(2,512)	(30,923)	(118,248)	(176,296)

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

You should read the following discussion and analysis together with our consolidated financial statements and the notes to those statements included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under "Risk Factors" and elsewhere in this prospectus, our actual results may differ materially from those anticipated in these forward-looking statements.

Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies available from third parties, we also explore potential new indications for known drug compounds. Since our inception in 2003, our experienced executive management team has built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $41.9 million in 2006, one product candidate for which an approvable letter has been issued by the U.S. Food and Drug Administration, or FDA, and five product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development. In March 2007, we sold our rights to a third marketed product that generated net product sales of $1.4 million in 2006 for cash consideration of $9.0 million.

In March 2003, we were incorporated in the State of California and began operations. In April 2003, we entered into agreements with investors for a $15.0 million Series A preferred stock financing, the funds from which were received in 2003 and early 2004. In January 2004, we reincorporated in the State of Delaware. In February 2004, we entered into agreements with investors for a $250.0 million Series B preferred stock and Series B Prime preferred stock financing led by an affiliate of Kohlberg Kravis Roberts & Co., the funds from which were received in 2004, 2005 and 2006. All of our outstanding preferred stock will convert into common stock in connection with this offering. On June 24, 2005, we acquired Orphan Medical, Inc., including its three marketed products, Xyrem, Antizol and Cystadane, in order to complement our development portfolio with marketed products and to build our commercial organization.

Our marketed products in 2006 were:

- *Xyrem (sodium oxybate oral solution).* Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Net product sales of Xyrem in 2006 were $29.0 million. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our 55 person specialty sales force. Xyrem is distributed in the United States by Express Scripts Specialty Distribution Services, or Express Scripts, a specialty pharmaceutical distribution company, which is our only customer for Xyrem. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. In October 2005, the European Agency for the Evaluation of Medical Products, or EMEA, approved Xyrem for the treatment of cataplexy associated with narcolepsy and in March 2007, the EMEA approved the product for the treatment of narcolepsy with cataplexy in adult patients. UCB has commercially launched Xyrem in 11 countries.

- *Antizol (fomepizole).* We market Antizol primarily to hospitals and emergency rooms, where it is used to treat both ethylene glycol and methanol poisoning. Net product sales of Antizol in 2006 were $12.5 million. Antizol is distributed to wholesalers in the United States, and we retain the services of a third party to promote the product. Antizol is marketed by our distributors in Canada and Israel. We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for ethylene glycol poisoning in dogs. Net product sales of Antizol-Vet in 2006 were $313,000.
- *Cystadane (betaine anhydrous).* Cystadane is approved by the FDA for the treatment of homocystinuria, an inherited metabolic disease. Net product sales of Cystadane in 2006 were $1.4 million. In March 2007, we sold our rights to Cystadane to an unrelated third party for cash consideration of $9.0 million.

Our late-stage product candidates are:

- *Luvox CR (fluvoxamine maleate extended release capsules).* Our most advanced product candidate is Luvox CR, an extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor, or SSRI, which has been developed for the treatment of obsessive compulsive disorder, or OCD, and social anxiety disorder, or SAD. We obtained the U.S. marketing rights to Luvox CR from Solvay Pharmaceuticals, Inc., or Solvay, in January 2007. Subject to successful completion of certain requirements set forth in an approvable letter issued by the FDA in February 2007 and FDA approval, we expect to commence promotion of Luvox CR in the United States in the first quarter of 2008 through an expanded specialty sales force. During 2007, we expect to make significant expenditures relating to the planned launch and commercialization of Luvox CR, including milestone payments to Solvay, activities related to our preparation for marketing and promotion, expansion of our specialty sales force and production of commercial quantities of Luvox CR.
- *JZP-6 (sodium oxybate).* We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient, or API, in Xyrem, for the treatment of fibromyalgia syndrome, or FMS. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of FMS. We are currently conducting two pivotal Phase III clinical trials, and we expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. We have granted to UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.

In addition to our product candidates in late-stage development, our clinical development pipeline consists of the following product candidates:

- *JZP-4 (Type IIa sodium channel antagonist).* Subject to the results of proposed and ongoing proof of concept clinical trials and long-term toxicology studies, we plan to commence a Phase II clinical trial of JZP-4 for the treatment of epilepsy in the fourth quarter of 2007. We are also developing JZP-4 for the treatment of bipolar disorder.
- *JZP-8 (benzodiazepine).* We plan to commence a Phase II clinical trial of JZP-8 for the treatment of acute repetitive seizure clusters in refractory epilepsy patients in the third quarter of 2007.
- *JZP-7 (dopamine agonist).* We intend to conduct an additional pharmacokinetics study of JZP-7 in 2007 prior to commencing Phase II clinical trials for the treatment of restless legs syndrome.
- *JZP-2 (benzodiazepine).* We have developed a target formulation for JZP-2 and plan to commence one or more clinical trials of JZP-2 for the acute treatment of panic attacks associated with panic disorder in 2007.

Although we generate product revenues, we have funded our operations primarily through the sale of convertible preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates and our collaboration with UCB related to Xyrem and JZP-6. Our sources of funding have included the following:

- *Equity Financings*. Our preferred stock financings raised gross proceeds of $265.0 million.
- *Debt Financings*. In connection with our acquisition of Orphan Medical, we issued $80.0 million aggregate principal amount of senior secured notes and warrants to purchase 8,695,652 shares of our Series BB convertible preferred stock. Additionally, in September 2006, we entered into a one year line of credit agreement with a financial institution under which we may borrow up to 80% of eligible accounts receivable, up to a maximum borrowing limit of $5.0 million.
- *Development Financing*. In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of JZP-3, a product candidate then in development for the treatment of general anxiety disorder. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development of the product candidate and not to seek product marketing approval from the FDA. As a result of our notification, we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization of JZP-3.
- *Collaboration*. Under the terms of our agreement with UCB for Xyrem and JZP-6, we received an upfront payment of $5.0 million and a $10.0 million payment upon election by UCB to exercise its rights to develop and commercialize JZP-6 for the treatment of FMS. We are also entitled to additional development and commercialization milestone payments of up to $148.0 million and royalties on all commercial sales of Xyrem and JZP-6 by UCB.

Since our inception, we have incurred significant net losses, and we expect to continue to incur net losses for the next several years as we develop, acquire or in-license additional products or product candidates, expand clinical trials for our product candidates currently in clinical development, expand our research and development activities, seek regulatory approvals and engage in commercialization preparation activities in anticipation of potential FDA approval of our product candidates. We will need to expand our commercial organization to launch additional products. It is very expensive to launch a product, and many expenses are incurred before revenues are received. We are unable to predict the extent of any future losses or when we will become profitable, if at all.

While we believe that our current cash, cash equivalents and marketable securities and the anticipated net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months, we expect to raise additional funds within this period of time through development financings, collaborations, or public or private debt or equity financings.

Revenues

Product Sales, Net

The following is a summary of our product sales, net for the years ended December 31, 2005 and 2006. We had no product sales prior to our acquisition of Orphan Medical in June 2005.

	Year Ended December 31,	
	2005	2006
	(In thousands)	
Xyrem	$ 11,200	$ 29,049
Antizol(1)	6,782	12,813
Cystadane	814	1,437
Total	$ 18,796	$ 43,299

(1) Includes sales of Antizol-Vet, which were $99,000 and $313,000 in 2005 and 2006, respectively.

Xyrem (sodium oxybate oral solution). Revenues from sales of Xyrem represented primarily sales in the United States to Express Scripts. Revenues from sales of Xyrem under our agreements with UCB and Valeant have not been material. Orphan drug exclusivity for Xyrem expires in 2009 and in 2012 for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy, respectively.

Antizol (fomepizole). Revenues from sales of Antizol in the United States represented primarily sales to pharmaceutical wholesalers. Our sales of Antizol to distributors outside of the United States have not been material. The orphan drug exclusivity for Antizol expired for ethylene glycol poisoning in 2004 and is scheduled to expire in December 2007 for methanol poisoning. We expect annual sales to remain at approximately the 2006 level unless generic competition enters the market.

Cystadane (betaine anhydrous). We sold our rights to Cystadane in March 2007 for $9.0 million, and, accordingly, we will not receive future revenues from the sale of this product.

Royalties, Net

We receive royalties primarily from international distributors of our products, typically based on their net sales of our products, subject to minimum royalty requirements. Approximately half of our 2006 royalties resulted from minimum royalty payments under our agreement with UCB. Royalty income was $146,000 and $594,000 in 2005 and 2006, respectively. We had no royalty revenues prior to the acquisition of Orphan Medical in June 2005. Although we do not expect royalty revenues to comprise a substantial portion of our revenues, we expect royalty revenues to increase in the future as UCB launches Xyrem in additional countries and Valeant launches Xyrem in Canada.

Contract Revenues

All of our contract revenues relate to upfront or milestone payments received from UCB. During 2005 and 2006, we recorded revenues related to non-refundable development milestone payments of $2.5 million and $500,000, respectively. In connection with the expansion of our agreement with UCB in 2006, UCB made an upfront payment of $5.0 million and subsequently an additional payment of $10.0 million upon exercise of its rights to develop and commercialize JZP-6 for the treatment of FMS. These payments are being amortized through 2019, the estimated performance period of the contract. This amortization represented the remaining $463,000 of contract revenues during 2006.

Sales to Express Scripts represented 51% and 65% of our total revenues in 2005 and 2006, respectively. Sales of Antizol and Cystadane to our wholesale customers AmerisourceBergen Corporation in 2005 and Cardinal Health in 2006 represented 15% and 12%, respectively, of our total revenues in those years. Revenues from UCB, including net product sales, net royalties and contract revenues, represented 12% of total revenues in 2005. No other customer accounted for more than 10% of our total revenues in 2005 or 2006.

Research and Development Expenses

Our research and development expenses consist of expenses incurred in identifying, developing and testing our product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist us in managing, monitoring and analyzing our clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical studies, fees paid to third parties for development candidates or drug delivery or formulation technologies that we have licensed, allocated expenses, such as facilities and information technology that support our research and development activities, and related personnel expenses, including stock-based compensation. Research and development costs are expensed as incurred, including payments made under our license agreements for product candidates in development.

Conducting a significant amount of research and development is central to our business model. Through December 31, 2006, we had invested more than $118.0 million in research and development since our formation in 2003, and we plan to continue to make significant investments in research and development for the foreseeable future in order to realize the potential of our portfolio of development candidates and earlier-stage research and development projects. Product candidates in later-stage clinical development generally have higher development costs than those in earlier stages of development, primarily due to the significantly increased size and length of the clinical trials.

The following table summarizes our research and development expenses for each of the years ended December 31, 2004, 2005 and 2006. Prior to 2004, we did not undertake any substantial research and development efforts. We designate development projects to which we have allocated significant research and development resources with the term "JZP" and a unique number. All of the product candidates designated with "JZP" in the following table, other than JZP-3, remain in development. Development projects in addition to JZP-3 that were designated with a JZP number but later terminated are included in "Other terminated projects" in the following table. Earlier-stage development and product lifecycle extension projects are included in "Other projects" in the following table. Early product concept feasibility studies and other research activities are included in "R&D support" in the following table. The expenditures summarized in the following table reflect costs directly attributable to each development candidate and to our "Other projects." We do not allocate salaries, benefits or other indirect costs to our development candidates or "Other projects," and we have included these costs in "R&D support" in the following table.

	Year Ended December 31,			Total
	2004	2005	2006	
	(In thousands)			
Ongoing JZP Projects:				
JZP-6	$ —	$ —	$ 14,209	$ 14,209
JZP-4	2,077	2,141	6,699	10,917
JZP-8	—	313	1,403	1,716
JZP-7	4	150	1,328	1,482
JZP-2	58	1,570	395	2,023
Terminated Projects:				
JZP-3(1)	12,577	27,305	14,797	54,679
Other terminated projects	1,437	5,878	—	7,315
Other projects	1	97	2,586	2,684
R&D support	1,834	8,329	13,539	23,702
Total	$ 17,988	$ 45,783	$ 54,956	$ 118,727

(1) Development has been terminated. This project was partially financed through $30.0 million of development financing discussed above.

In July 2004, we commenced our JZP-3 development efforts when we entered into a development and commercialization agreement, a product supply agreement and a technology transfer agreement with a pharmaceutical company and made a $1.0 million payment to this company. We made additional development milestone payments under these agreements of $2.0 million and $5.0 million in 2004 and 2005, respectively. We commenced a Phase III clinical trial of JZP-3 in late 2004. In June 2006, following analysis of the results of the Phase III clinical trial, we discontinued development of JZP-3 and terminated the program.

The process of developing and obtaining FDA approval of products is costly and time consuming. Development activities and clinical trials can take years to complete, and failure can occur any time during the clinical trial process. In addition, the results from early clinical trials may not be predictive of results obtained in later and larger clinical trials, and product candidates in later stages of clinical trials may fail to show the desired safety and efficacy despite having progressed successfully through initial clinical testing. For example, we ceased our development of JZP-3 after its Phase III clinical trial was not successful and after we had incurred significant development costs. Although our program for identifying and developing new product candidates is designed to mitigate risk, the successful development of our product candidates is highly uncertain. Further, even if our product candidates are approved for sale, we may be unable to successfully commercialize them in which case we would not generate the revenues we anticipate. Our ability to successfully develop, obtain FDA approval for and commercialize our products may be affected by a variety of factors including, among others:

- our ability, and the ability of our partners, to manufacture or obtain from third parties materials sufficient to complete our clinical trials;
- risks associated with trial design, which may result in a failure of the trial to show statistically significant results even if the product candidate is effective;
- safety issues, including adverse events associated with product candidates; and
- governmental or regulatory delays and changes in regulatory requirements, policy and guidelines.

Development timelines, probability of success and development costs vary widely among product candidates. As a result, we are unable to determine the time and completion costs related to the development of our product candidates or estimate when, or to what extent, we will generate revenues from the commercialization and sale of any of our product candidates other than Luvox CR, which we expect to commence promoting in the United States in the first quarter of 2008.

Critical Accounting Policies and Significant Estimates

Revenue Recognition

Revenues are recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable and collection is reasonably assured. In evaluating arrangements with multiple elements we consider whether components of the arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. This evaluation requires subjective determinations and requires management to make judgments about the fair value of individual elements and whether such elements are separable from other aspects of the contractual relationship. The consideration received in such arrangements is allocated among the separate units of accounting based on their respective fair values when there is reliable evidence of fair value for all elements of the arrangement. If there is no evidence of fair value for all the elements of the arrangement, consideration is allocated based on the residual value method for the delivered elements. Under the residual method, the amount of revenues allocated to the delivered elements equals the total arrangement consideration less the aggregate fair value of any undelivered elements. The applicable revenue recognition criteria are applied to each of the separate units. Payments received in advance of work performed are recorded as deferred revenues and recognized when earned.

Product Sales, Net

Revenues from sales of Xyrem within the United States are recognized upon transfer of title, which occurs when Express Scripts removes product from our consigned inventory location at its facility for shipment to a patient. Antizol is, and prior to the sale of our rights Cystadane was, shipped to our wholesaler customers in the United States with free on board destination shipping terms, and we recognize revenues when delivery occurs. Our international sales often have customer acceptance clauses and therefore we recognize revenues when we are notified of acceptance or the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, we recognize revenues when title transfers, which is generally when the product leaves our logistics provider's facilities.

Revenues from sales of products within the United States are recorded net of estimated allowances for prompt payment discounts, wholesaler and specialty distributor fees, government chargebacks and rebates. Significant judgment is inherent in the selection of assumptions and in the interpretation of historical experience, as well as the identification of external and internal factors affecting the estimates. Because Xyrem is sold to one distributor in the United States, allowances and adjustments to estimates for allowances have not historically been material.

Royalties, Net

We receive royalties from third parties based on sales of our products under out-licensing and distributor arrangements. For those arrangements where royalties are reasonably estimable, we recognize revenues based on estimates of royalties earned during the applicable period and adjust for differences between the estimated and actual royalties in the following quarter. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, we recognize revenues upon receipt of royalty statements from our licensee or distributor.

Contract Revenues

Nonrefundable fees where we have no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where we have continuing performance obligations, nonrefundable fees are deferred and recognized ratably over our projected performance period. We recognize at-risk milestone payments, which are typically related to regulatory, commercial or other achievements by us or our licensees and distributors, as revenues when the milestone is accomplished and collection is reasonably assured. Refundable fees are deferred and recognized as revenues upon the later of when they become nonrefundable or when our performance obligations are completed.

UCB Agreement

In June 2006, we entered into an agreement with UCB that amended and restated a prior agreement between Orphan Medical and UCB. Under the terms of the amended agreement, UCB has the right to market Xyrem for the treatment of narcolepsy and JZP-6 for the treatment of FMS in 54 countries outside of the United States. Under the prior agreement, UCB made a nonrefundable development milestone payment to us of $2.5 million in November 2005 and a nonrefundable commercial milestone payment of $500,000 in June 2006, which we recognized upon achievement of the milestones. UCB also made an upfront payment of $5.0 million upon execution of the amended agreement in June 2006 and an additional payment of $10.0 million in August 2006 upon exercise of its rights to develop and commercialize JZP-6 for the treatment of FMS. We recognized contract revenues of $463,000 related to these upfront payments during the year ended December 31, 2006. The remaining $14.5 million was recorded as deferred revenues as of December 31, 2006 and is being recognized ratably through 2019, the expected performance period under the agreement. The amended agreement requires UCB to make additional milestone payments of up to $148.0 million, of which up to $8.0 million relate specifically to Xyrem for the treatment of narcolepsy, up to $40.0 million relate to the development and approval of JZP-6 for the treatment of FMS and up to $100.0 million relate primarily to the commercialization of JZP-6 for the treatment of FMS as well as additional sales of Xyrem for the treatment of narcolepsy.

Goodwill and Intangible and Long-Lived Assets

Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed. We have determined that we operate in a single segment and have a single reporting unit associated with the development and commercialization of pharmaceutical products. The annual test for goodwill impairment is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step indicates an impairment, then the loss is measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of the fair value of the reporting unit over the fair value of all identified assets and liabilities. We test goodwill for impairment annually in October and have concluded that no impairment existed as of October 1, 2006. We will also test for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. There have been no changes since October 1, 2006 that would cause us to reevaluate our conclusion.

Intangible assets consist primarily of developed technology, agreements not to compete and trademarks. Intangible assets are amortized on a straight-line basis over their estimated useful lives, which range from three to ten years. The estimated useful lives associated with other intangible assets are consistent with underlying agreements, or the estimated lives of the products. Once an intangible asset is fully amortized, the gross costs and accumulated amortization are removed from the consolidated balance sheet. We evaluate purchased intangibles and other long-lived assets, other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. The amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value, calculated using discounted cash flows. Since our inception, there has been no such impairment.

As a result of our acquisition of Orphan Medical in June 2005, we had recorded goodwill and intangible assets at December 31, 2006 as follows:

	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Weighted Average Remaining Useful Life
		(In thousands)		(Years)
Developed technology	$ 75,100	$ 11,970	$63,130	8.0
Agreements not to compete	5,600	2,042	3,558	3.0
Trademarks	2,600	414	2,186	8.0
Other	400	134	266	3.0
Amortizable intangible assets	83,700	14,560	69,140	
Goodwill	38,213			
Total	$121,913			

Stock-Based Compensation

Stock-Based Compensation Under SFAS 123

Prior to January 1, 2006, we accounted for stock-based employee compensation arrangements using the intrinsic value method of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (“APB 25”) and related interpretations. Prior to January 1, 2006, we complied with the disclosure-only provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, (“SFAS 123”) as amended by SFAS No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure, an amendment to SFAS Statement No. 123*. Under APB 25 compensation expense for employees is based on the excess, if any, of the fair value of our common stock over the exercise price of the option on the date of grant. No stock-based compensation expense was recorded under APB 25 during the years ended December 31, 2004 and 2005.

Change in Accounting Principle—Stock-Based Compensation Under SFAS 123R

Effective January 1, 2006, we adopted SFAS No. 123(R), *Share-Based Payment* ("SFAS 123R"), which requires compensation expense related to share-based transactions, including employee stock options, to be measured and recognized in the financial statements based on fair value. SFAS 123R revises SFAS 123, as amended, and supersedes APB 25. We adopted SFAS 123R using the modified prospective approach. Under the modified prospective approach, SFAS 123R applies to new awards and to awards modified, repurchased, or cancelled after the required effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered that are outstanding as of the required effective date are recognized as the requisite service is rendered on or after the required effective date. The compensation expense for that portion of awards is based on the grant-date fair value of those awards. The compensation expense for awards with grant dates prior to January 1, 2006, are attributed to periods beginning on or after the effective date using the attribution method that was used under SFAS 123, except that the method of recognizing forfeitures only as they occur is not continued.

We are using the straight-line method to allocate compensation cost to reporting periods under SFAS 123 and SFAS 123R for stock options granted during each of the three years ended December 31, 2006.

For each of the three years ended December 31, 2004, 2005, 2006, under both SFAS 123 and SFAS 123R we elected to use the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of stock options was estimated at the grant date using the following assumptions:

	Year Ended December 31,		
	2004	2005	2006
Weighted-average volatility	80%	60%	61%
Weighted-average expected term	5	5	6
Range of risk-free rates	3.0-4.0%	3.9-4.4%	4.6-5.1%
Expected dividend yield	0.0%	0.0%	0.0%

The weighted-average grant date fair value per share of employee stock options granted during the years ended December 31, 2004, 2005 and 2006 was $.81, $.78 and $.97, respectively.

Volatility. As we do not have any trading history for our common stock, the expected stock price volatility for our common stock was estimated by taking the median historic stock price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the biopharmaceutical industry similar in size, stage of life cycle and financial leverage. We did not rely on the implied volatilities of traded options in our industry peers' common stock, because either the term of those traded options was much shorter than the expected term of our stock option grants, or the volume of activity was relatively low.

Expected Term. We have very little historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for our stock option grants. As a result, for stock option grants made during the year ended December 31, 2006, the expected term was estimated using the short-cut method allowed under Securities and Exchange Commission Staff Accounting Bulletin No. 107 *Share-Based Payment*. For stock options granted during the years ended December 31, 2004 and 2005 we estimated the expected term of stock options based on the expected term of options granted by publicly traded industry peers.

Risk-free Rate. The risk-free interest rate assumption was based on zero coupon U.S. Treasury instruments whose term was consistent with the expected term of our stock option grants.

Expected Dividend Yield. We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.

Common Stock Fair Value. The fair value of our common stock during the years 2004 and 2005 was determined by our board of directors with assistance from management. In May 2006, we engaged an independent valuation specialist to perform a valuation of our common stock. The valuation used a two-step methodology that first estimated the fair value of the company as a whole, and then allocated a portion of the enterprise value to our common stock. This approach is consistent with the methods outlined in the AICPA Practice Aid *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. The valuation methodology utilized both the "income approach" and the "market approach" to estimate enterprise value. The "income approach" estimates the fair value of the enterprise based upon a projection of future cash flows while the "market approach" is based upon comparisons to publicly-held companies in our industry at a similar stage of development. In order to allocate the enterprise value to the various securities that comprise our capital structure, the option-pricing method was used. A discount was applied to account for a lack of marketability. After considering this valuation and other factors, the board of directors determined the fair value of our common stock to be $1.50 as of June 28, 2006.

In December 2006, we engaged the independent valuation specialist to perform another valuation effective as of December 31, 2006. This valuation was completed in February 2007 and used the same methodology as the previous valuation, except that we also considered the probability-weighted expected return method for allocating enterprise value to the common stock. After considering the valuation and other factors, including valuation estimates prepared by our proposed underwriters, the board of directors determined the fair value of our common stock to be $1.75 as of February 13, 2007. The board of directors also reviewed our corporate developments from June 28, 2006 to February 13, 2007 and noted that, while there were a number of development milestones reached during the period from June 28, 2006 to December 31, 2006, no such developments occurred in the period from December 31, 2006 to February 13, 2007. Accordingly, we increased the estimated fair value of the common stock ratably from $1.50 to $1.75 over the period from June 28, 2006 to December 31, 2006 for purposes of calculating stock-based compensation expense associated with our stock option grants under SFAS 123R.

Forfeitures. SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. In determining our historic forfeiture rate, we have excluded stock option grants totaling 12,548,445 shares issued to executives in February 2004. We believe these stock option grants will not be cancelled due to termination, and therefore have applied a forfeiture rate of 0% for those stock option grants. The annualized forfeiture rate used for the remaining stock option grants was 7%. The forfeiture rate selected did not have a material impact on stock-based compensation expense in 2006. Prior to adoption of SFAS 123R, we accounted for forfeitures of stock option grants as they occurred.

As a result of our Black-Scholes option fair value calculations and the allocation of value to the vesting periods using the straight-line vesting attribution method, we recognized $3.5 million of stock-based compensation expense in 2006, of which $8,000, $661,000, and $2.8 million were charged to cost of product sales, research and development expenses and selling, general and administrative expenses, respectively. The adoption of SFAS 123R caused basic and diluted net loss per common share to increase by $24.51 in 2006. No income tax benefit was recognized in the statement of operations for 2006. Compensation cost capitalized as a component of inventory during 2006 was $18,000.

The total compensation cost related to unvested stock option grants not yet recognized as of December 31, 2006 was $5.5 million, and the weighted-average period over which these grants are expected to vest is 1.9 years.

Beneficial Conversion Feature

The Company accounts for potentially beneficial conversion features under Emerging Issues Task Force No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* and EITF Issue No. 00-27, *Application of Issue 98-5 to Certain Convertible Instruments*. In January and December 2006, we issued 35,200,924 and 38,134,349 shares, respectively, of Series B preferred

stock and Series B Prime preferred stock at a purchase price of $1.3636 per share. At the time of each of these issuances, the value of the common stock into which the Series B preferred stock and Series B Prime preferred stock is convertible had a fair value greater than the proceeds for such issuances. Accordingly, we recorded a deemed dividend on the Series B preferred stock and Series B Prime preferred stock of $3.5 million in January 2006 and $18.4 million in December 2006, which equals the amount by which the estimated fair value of the common stock issuable upon conversion of the issued Series B preferred stock and Series B Prime preferred stock exceeded the proceeds from such issuances.

Accrued Expenses

As part of the process of preparing financial statements, we are required to estimate accrued expenses. This process involves identifying services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for such service as of each balance sheet date in our financial statements. Examples of estimated accrued expenses include marketing and promotional materials, professional service fees, such as fees to lawyers and accountants, and contract service fees, such as amounts paid to clinical monitors, data management organizations, clinical research organizations and fees paid to contract manufacturers in conjunction with the production of clinical materials. In connection with such service fees, our estimates are most affected by our understanding of the status and timing of services provided relative to the actual levels of services incurred by such service providers. The majority of our service providers invoice us monthly in arrears for services performed. In the event that we do not identify certain costs that have begun to be incurred or we under- or overestimate the level of services performed or the costs of such services, our reported expenses for such period would be too low or too high. The date on which certain services commence, the level of services performed on or before a given date and the cost of such services are often subject to our judgment. We make these judgments based upon the facts and circumstances known to us in accordance with generally accepted accounting principles.

In-Process Research and Development

In connection with the acquisition of Orphan Medical, we recorded a charge of $21.3 million in 2005 for acquired in-process research and development. This amount represented the estimated fair value related to three incomplete product candidate development projects for which technological feasibility had not been established and that had no alternative future use at the time of the acquisition.

The fair value of the in-process research and development was determined using the “income approach.” This method requires a forecast of all the expected future net cash flows associated with the in-process technology discounted to present value by applying an appropriate discount rate. The discount rate used reflects the weighted-average cost of capital for companies in our industry, as well as specific risks associated with the cash flows being discounted.

In January 2005, Orphan Medical submitted a supplemental New Drug Application, or sNDA, to the FDA seeking an expanded label indication for Xyrem. At the time of the acquisition, the FDA had not yet approved the sNDA. As a result, we charged the value associated with the additional label indication to in-process research and development, which accounted for 71% of total in-process research and development expense recorded in connection with the acquisition. The discount rate used to calculate the fair value of Xyrem for the new indication of excessive daytime sleepiness in patients with narcolepsy was 26%. At the time of acquisition, Orphan Medical was also conducting a Phase II clinical trial to evaluate the use of sodium oxybate, the API in Xyrem, to treat FMS. The discount rate used to calculate the fair value of this development project was 50%. Positive results for the Phase II trial were determined when the trial was unblinded in August 2005. In August 2006, we initiated a Phase III clinical trial of sodium oxybate for the treatment of FMS.

Results of Operations

Comparison of Years Ended December 31, 2005 and 2006

	2005	2006	Increase/ (Decrease)	% Increase/ (Decrease)
		(In thousands)		
Product sales, net	$18,796	$43,299	$ 24,503	130%
Royalties, net	146	594	448	307%
Contract revenues	2,500	963	(1,537)	(61)%
Cost of product sales	4,292	6,968	2,676	62%
Research and development expenses	45,783	54,956	9,173	20%
Selling, general and administrative expenses	23,551	51,384	27,833	118%
Purchased in-process research and development	21,300	—	(21,300)	N/A(1)
Amortization of intangible assets	4,960	9,600	4,640	94%
Interest income	1,318	2,307	989	75%
Interest expense	7,129	14,129	7,000	98%
Other expense	901	1,109	208	23%
Gain on extinguishment of development financing obligation	—	31,592	31,592	N/A(1)

(1) No comparable data for comparable year.

Product Sales, Net

The increase in product sales, net in 2006 compared to 2005 was primarily due to the inclusion of only approximately six months of product sales in 2005, subsequent to our acquisition of Orphan Medical in June 2005, compared to a full year in 2006. Other factors affecting this increase included:

- expansion of the Xyrem sales force from 36 to 55 employees in late 2005;
- receipt from the FDA in November 2005 of expanded marketing approval for Xyrem for the treatment of excessive daytime sleepiness in patients with narcolepsy and a corresponding launch of the new indication in early 2006;
- increases in the price that we charge our central pharmacy for Xyrem of 6.4% and 7.7% in December 2005 and August 2006, respectively; and
- increases in the price that we charge our wholesale customers for Antizol of 4.2% and 5.0% in December 2005 and November 2006, respectively.

Royalties, Net

The increase in royalties, net in 2006 compared to 2005 was principally due to an increase in sales of Xyrem by UCB from $9,000 in 2005 to $305,000 in and 2006. Royalties we received from other products accounted for the remainder of the increase.

Contract Revenues

Contract revenues in 2006 primarily consisted of a $500,000 milestone payment from UCB in June 2005, triggered by pricing approval in France for Xyrem, and amortization of deferred revenues on payments totaling $15.0 million from UCB in 2006 related to JZP-6. Contract revenues in 2005 consisted of a $2.5 million milestone payment from UCB received in November 2005, triggered by the approval by the EMEA of Xyrem for the treatment of cataplexy associated with narcolepsy.

Cost of Product Sales

The increase in the cost of product sales in 2006 compared to 2005 was primarily due to the inclusion of a full year of product sales in 2006 compared to approximately six months of product sales in 2005, subsequent to our acquisition of Orphan Medical in June 2005. Our gross margin increased from 77% in 2005 to 84% in 2006. The primary reason for this increase was a lower fair value adjustment to inventory acquired as part of the acquisition of Orphan Medical in 2006 compared to 2005. Our cost of product sales reflected a fair value adjustment of $1.6 million and $775,000 during 2005 and 2006, respectively. This fair value adjustment will not have a material impact on cost of product sales in future periods.

Research and Development Expenses

Higher research and development expenses in 2006 as compared to 2005 resulted primarily from higher spending in 2006 on early phase development and preclinical studies, along with higher salaries and benefits expenses related to a growth in research and development headcount during 2006. Research and development expenses did not increase substantially as a result of the Orphan Medical acquisition. Although total spending on late-stage programs did not change substantially from 2005 to 2006, the components of spending on late-stage programs changed. During 2005, a substantial portion of our research and development expenses related to JZP-3, and, during 2006, a substantial portion of our research and development expenses were attributable to JZP-3 and JZP-6.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were higher in 2006 than in 2005 as a result of a number of factors, including:

- inclusion of only six months of Xyrem sales and marketing activities in 2005, compared to a full year of activities in 2006;
- costs associated with the launch of a new indication for Xyrem in early 2006;
- an increase in the Xyrem sales force from 36 at the time of the Orphan Medical acquisition to 55 in November 2005;
- outside legal costs of $5.4 million incurred during 2006 in connection with an investigation by the U.S. Attorney’s Office of activities related to the promotion of Xyrem;
- building a medical affairs department; and
- an increase in headcount and related salaries and benefits.

Purchased In-process Research and Development

In connection with our June 2005 acquisition of Orphan Medical, we recorded a charge of $21.3 million for acquired in-process research and development, representing the estimated fair value related to three incomplete projects for which, at the time of the acquisition, technological feasibility had not been established and that had no alternative future use.

Amortization of Intangible Assets

Our intangible assets consist primarily of developed technology, agreements not to compete and trademarks, all of which were recorded as a result of the acquisition of Orphan Medical in June 2005. We amortize intangible assets on a straight-line basis over their estimated useful lives. Amortization expense was higher in 2006 as compared to 2005 primarily due to the inclusion of only six months of amortization in 2005 as compared to a full year of amortization in 2006.

Interest Income

Interest income was higher in 2006 as compared to 2005 primarily due to higher average balances of investable assets coupled with higher interest rates.

Interest Expense

Interest expense primarily related to interest on our $80.0 million principal amount of senior secured notes and interest on the development financing of JZP-3 described above, both of which were recorded using the effective interest method. $5.6 million of the increase in interest expense in 2006 as compared to 2005 was attributable to the fact the notes were outstanding for the full year in 2006. Interest on the notes was comprised of the accretion of a discount related to warrants that were issued in conjunction with the notes, amortization of debt issuance costs and quarterly cash payments for interest. Interest expense related to the development financing was $445,000 in 2005, compared with $1.5 million 2006.

Other Expense

On July 1, 2005, we adopted the provisions of Financial Accounting Standards Board, or FASB, Staff Position No. 150-5, *Issuer's Accounting under Statement No. 150 for Freestanding Warrants and Other Similar Instruments on Shares that are Redeemable*, or FSP 150-5, an interpretation of FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*, which required us to classify our preferred stock warrants as current liabilities and adjust the carrying value to fair value at the end of each reporting period. This resulted in $901,000 of expense in 2005 and $1.1 million of expense in 2006 arising from the increase in value of preferred stock warrants. We will continue to adjust the liability for changes in the fair value of the warrants until the earlier of the exercise of the warrants to purchase shares of convertible preferred stock, at which time the liability will be reclassified to temporary equity, or the conversion of the underlying Series BB preferred stock into common stock, at which time the liability will be reclassified to stockholders' deficit. Upon completion of this offering, any outstanding warrants will automatically become warrants to purchase common stock, and the liabilities will be reclassified to stockholders' deficit.

Gain on Extinguishment of Development Financing Obligation

In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of JZP-3, a product candidate then in development. We were obligated to repay the third party $37.5 million subject to, and conditioned upon, approval by the FDA to market the product in the United States. In addition, we agreed to pay royalties at specified rates based on sales of the product within the United States. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development of JZP-3 and not to seek product marketing approval from the FDA. As of the date we notified the third party of our intention to discontinue development of JZP-3, we had recorded $31.6 million for future possible payments as a liability on our balance sheet, of which $30.0 million related to principal and $1.6 million related to interest accrued using the effective interest method. As a result of our notification, we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization of JZP-3, and we recorded a gain of $31.6 million resulting from the extinguishment of liabilities related to this development financing.

Comparison of Years Ended December 31, 2004 and 2005

	2004	2005	Increase	% Increase
		(In thousands)		
Research and development expenses	$17,988	$45,783	$27,795	155%
Selling, general and administrative expenses	7,459	23,551	16,092	216%
Interest income	643	1,318	675	105%

Effect of Orphan Medical Acquisition

Our June 2005 acquisition of Orphan Medical caused a significant change in our business and results of operations. The following line items were not applicable to our 2004 results of operations but became applicable in 2005 as a result of the acquisition:

- all product sales, net and cost of product sales during 2005 related to sales of our Xyrem, Antizol and Cystadane products acquired in connection with our acquisition of Orphan Medical;
- royalties, net recorded in 2005 related primarily to a product that Orphan Medical had divested in 2003;
- contract revenues in 2005 consisted of a $2.5 million milestone payment from UCB in November 2005, triggered by the approval by the EMEA of Xyrem for the treatment of cataplexy associated with narcolepsy;
- acquired in-process research and development charge recorded in 2005 represented the estimated fair value related to three incomplete projects for which, at the time of the Orphan Medical acquisition, technological feasibility had not been established and that had no alternative future use; for additional information regarding this in-process research and development charge, see Note 5 to our financial statements appearing elsewhere in this prospectus;
- amortization expense recorded during 2005 related to developed technology, agreements not to compete and trademarks, all of which were recorded as a result of the acquisition of Orphan Medical; see Note 5 to our financial statements appearing elsewhere in this prospectus for more information regarding intangible assets and related amortization;
- interest expense during 2005 related to interest on the $80.0 million principal amount of senior secured notes issued in connection with the Orphan Medical acquisition; and
- we adopted the provisions of FSP 150-5 on July 1, 2005, which required us to classify our preferred stock warrants as current liabilities and adjust the carrying value to fair value at the end of each reporting period. This resulted in $901,000 of expense in 2005 arising from the increase in value of preferred stock warrants.

Research and Development Expenses

The increase in research and development expenses in 2005 compared to 2004 was primarily due to more activity and higher spending in 2005 on the Phase III clinical development of JZP-3, a product candidate that we initiated in the second half of 2004 and discontinued in mid-2006. We made an initial payment of $5.0 million to a third party in July 2005 for the North American rights to a product candidate, the development of which was terminated in late 2005. The remainder of the increase primarily related to salaries and benefits expenses associated with increased headcount.

Selling, General and Administrative Expenses

The majority of the increase in 2005 selling, general and administrative expenses compared to 2004 was due to selling expenses incurred following the acquisition of Orphan Medical in June 2005, primarily related to Xyrem promoting and marketing activities in the United States. At the time of the acquisition, we retained all of

the Orphan Medical sales force, consisting of 32 specialty sales consultants and 4 sales managers focused on selling Xyrem. In November 2005, we added 19 additional employees to the sales force. In addition to these expenses, salaries and benefits expenses increased because of increases in headcount in our commercial and general and administrative organizations.

Interest Income

The increase in interest income in 2005 as compared to 2004 was driven primarily by higher interest rates in 2005 than in 2004.

Liquidity and Capital Resources

Since our inception, we have incurred significant net losses, and, as of December 31, 2006, we had an accumulated deficit of $177.6 million. We have not achieved profitability, and we anticipate that we will continue to incur net losses for the next several years. We expect that our development, selling, marketing and general and administrative expenses will continue to increase and, as a result, we will need to generate significant net product sales, royalty and other revenues to achieve profitability. Our audit report in our 2006 consolidated financial statements contains an explanatory paragraph stating that our recurring losses from operations and cash used in operating activities raise substantial doubt about our ability to continue as a going concern. We believe that the successful completion of this offering will eliminate this doubt and enable us to continue as a going concern. If we are unable to successfully complete this offering, we will need to execute alternative financing or operational plans to continue as a going concern.

Our operations have been financed primarily through the sale of convertible preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates and our collaboration with UCB related to one of our products and product candidates. In addition to amounts received from UCB, we have raised a total of $374.4 million (net of issuance costs), as follows:

Date	Amount (In thousands)	Financing
April 2003	$ 2,078	Series A convertible preferred stock
August 2003	4,998	Series A convertible preferred stock
January 2004	7,850	Series A convertible preferred stock
February 2004	48,683	Series B and B Prime convertible preferred stock
April 2004	400	Series B convertible preferred stock
June 2005	99,853	Series B and B Prime convertible preferred stock
June 2005	77,999	Senior secured notes and warrants(1)
July 2005 – February 2006	30,000	Project-specific financing(2)
January 2006	34,990	Series B and B Prime convertible preferred stock
December 2006	65,000	Series B and B Prime convertible preferred stock
September – December 2006	2,191	Line of credit(3)

(1) In June 2005, we issued $80.0 million aggregate principal amount of 15% senior secured notes and warrants to purchase 8,695,652 shares of our Series BB convertible preferred stock to certain third parties, some of whom are affiliated with investors in our preferred stock. Cash interest payments of $12.0 million per year are due on the notes, payable quarterly in arrears. The principal of $80.0 million is due in full in June 2011. Under the terms of the notes we are required to maintain a minimum cash balance of $12.0 million, which is shown as long-term restricted cash and investments on our consolidated balance sheet. The notes contain customary covenants, including limitations on our ability to pay dividends, make investments or other restricted payments, incur debt, grant liens, sell assets or enter into sale-leaseback transactions. Upon the occurrence of certain events, we may be required to repay the notes at a premium. At our option, the notes can be repaid prior June 2011 by paying a premium, which was 30.0% of the principal amount of the notes as of December 31, 2006 and is reduced to zero ratably over the remaining term of the notes.

(2) In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of JZP-3, a product candidate then in development. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development of JZP-3 and not to seek product marketing approval from the FDA. As a result of our notification,

we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization of JZP-3.

(3) In September 2006, we entered into a one year line of credit agreement with a financial institution under which we may borrow up to 80% of eligible accounts receivable, up to a maximum of $5.0 million of borrowings. Borrowings under the line of credit bear interest at the financial institution's prime rate, which was 8.25% as of December 31, 2006. At December 31, 2006, $2.2 million was outstanding under the agreement. See Note 7 to our financial statements appearing elsewhere in this prospectus for additional information.

As of December 31, 2006, we had $78.9 million in cash and cash equivalents, excluding $12.3 million in restricted cash required to be retained at all times pursuant to our senior secured notes and certain other agreements, held primarily in obligations of U.S. government agencies, corporate debt securities and money market funds.

The following table shows a summary of our cash flows for each of the three years ended December 31, 2004, 2005 and 2006.

	2004	2005	2006
		(In thousands)	
Cash provided by (used in):			
Operating activities	$(21,006)	$ (52,337)	$(57,325)
Purchases of property and equipment	(992)	(1,413)	(1,682)
Acquisition of Orphan Medical	—	(146,116)	—
Other investing activities	(5,946)	(6,050)	150
Financing activities	57,162	192,852	117,191

Net cash used in operating activities in 2006 primarily reflected the net loss, less the gain on extinguishment of development financing, offset in part by depreciation and amortization and changes in working capital. Net cash used in operating activities in 2005 primarily reflected the net loss, which was offset in part by depreciation and amortization, in-process research and development and changes in working capital. Net cash used in investing activities related to the purchase, sale and maturity of short-term investments used to fund the day-to-day needs of the business. Purchases of property and equipment have not been material to date. Net cash provided by financing activities was primarily attributable issuance of stock, notes and project specific financing, as discussed above.

We believe that our current cash, cash equivalents and marketable securities and the anticipated net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available financial resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

- the amount of sales and other revenues from our commercial products, including selling prices for products that we may begin selling and price increases for our current products;
- market acceptance of and the number of prescriptions written for our products;
- promotional and marketing costs associated with Luvox CR and Xyrem in the United States, including the cost and timing of expanding our marketing and sales capabilities;
- revenues from current and potential future development and/or commercial collaboration partners;
- the scope, rate of progress, results and costs of our preclinical studies, clinical trials and other research and development activities;
- the number and characteristics of product candidates that we pursue;
- the cost and timing of establishing clinical and commercial supplies of our product candidates;
- the cost and timing of obtaining regulatory approval;

- payments of milestones to third parties;
- hiring of new employees to support our continued growth;
- the cost of investigations, litigation and/or settlements, in particular the ongoing investigation by the U.S. Attorney for the Eastern District of New York;
- the cost of preparing, filing, prosecuting, defending and enforcing patent claims and other intellectual property rights; and
- the extent to which we acquire, in-license or invest in new businesses, products or product candidates.

We will need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, or at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations. We may seek to raise additional funds through development financings, collaborations, or public or private debt or equity financings. If we raise funds through collaborations, we may be required to relinquish, on terms that are not favorable to us, rights to some of our product candidates that we would otherwise seek to develop or commercialize ourselves. If we raise additional funds through the issuance of debt securities, these securities could have rights that are senior to holders of our common stock and could contain covenants that restrict our operations. Any additional equity financing may be dilutive to our stockholders. In addition, if we raise additional funds through the sale of equity securities, new investors could have rights superior to our existing stockholders. The terms of future financings may restrict our ability to raise additional capital, which could delay or prevent the further development of our product candidates or commercialization of our products. Our failure to raise capital when needed may harm our business and operating results.

Contractual Obligations

The following table reflects a summary of our contractual obligations as of December 31, 2006:

	Payments due by period				
Contractual Obligations(1)	**Total**	**Less than 1 Year**	**1-3 Years**	**3-5 Years**	**More than 5 Years**
			(In thousands)		
Senior secured notes(2)	$ 80,000	$ —	$ —	$80,000	$ —
Line of credit	2,191	2,191	—	—	—
Operating lease obligations(3)	2,411	1,227	1,167	17	—
Other obligations(4)	1,543	1,543	—	—	—
Total	$86,145	$ 4,961	$ 1,167	$80,017	$ —

(1) Milestone payments and royalty payments under our license and collaboration agreements are not included in the table above because we cannot, at this time, determine when or if the related milestones will be achieved or the events triggering the commencement of payment obligations will occur.

(2) On June 24, 2005, to partially finance the acquisition of Orphan Medical, we issued $80.0 million of senior secured notes. The notes bear interest at a rate of 15% per annum, payable quarterly in arrears. The amounts in the table above do not include interest on these notes. See Note 7 to our consolidated financial statements appearing elsewhere in this prospectus for additional information.

(3) Includes the minimum rental payments for our corporate office building in Palo Alto, California and automobile lease payments for the sales force. In March 2007, we entered into a lease agreement for approximately 13,000 square feet of office space in Palo Alto, California, which is not reflected in the table above. The annual lease payments for this space are approximately $460,000. The fixed term expires in August 2008, after which we may extend the term for up to six months subject to certain conditions.

(4) Consists of commitments to third party manufacturers of two of our commercial products. Does not include obligations under contracts with a contract research organization that are not cancellable without the payment of liquidated damages of $3.1 million.

The table above reflects only payment obligations for development products that are fixed and determinable. We also have contractual payment obligations, the amount and timing of which are contingent upon future events.

Amounts and estimated timing of significant payments related to licensing and other arrangements not included in the contractual obligations table above are as follows:

- In January 2007, we entered into a product license agreement with Solvay for the rights to market Luvox and Luvox CR in the United States. Under the terms of the agreement, we made a $2.0 million payment upon execution of the agreement, and we are required to make additional payments of up to $138.0 million if various commercial and development milestones are achieved, including up to $41.0 million to be paid on or prior to commercial launch of Luvox CR which, subject to FDA approval, we expect in the first quarter of 2008, and $2.0 million payable if we commercially launch Luvox. In addition, we agreed to pay royalties at specified rates based on net product sales.
- In October 2004, we entered into an agreement with GlaxoSmithKline to purchase worldwide rights to the API in JZP-4. We paid $2.0 million upon execution of the agreement and $3.0 million in July 2006 upon achievement of a development milestone. We also agreed to pay up to $113.5 million upon the achievement of future development and commercial milestones and royalties at specified rates based on net product sales.

Recent Accounting Pronouncements

In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109*, or FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006 and is required to be adopted by us effective January 1, 2007. The cumulative effects, if any, of applying FIN 48 will be recorded as an adjustment to retained earnings as of the beginning of the period of adoption. We are currently evaluating the effect that the adoption of FIN 48 will have on our results of operations and financial position.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, or SAB 108. SAB 108 provides guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. SAB 108 establishes an approach that requires quantification of financial statement errors based on the effects on each of our balance sheets and statement of operations and the related financial statement disclosures. SAB 108 will be adopted by us in the first quarter of 2007. We are currently evaluating the effect that the adoption of SAB 108 will have on our results of operations or financial position.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, or SFAS 157. SFAS 157 provides guidance for using fair value to measure assets and liabilities. It also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value, and does not expand the use of fair value in any new circumstances. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and is required to be adopted by us effective January 1, 2008. We are currently evaluating the effect that the adoption of SFAS 157 will have on our results of operations and financial position.

Off-Balance Sheet Arrangements

Since inception, except for standard operating leases, we have not engaged in any off-balance sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities.

Quantitative and Qualitative Disclosures About Market Risk

Our exposure to market risk is confined to our cash, cash equivalents and restricted cash and investments, all of which have maturities of less than one year. The goals of our investment policy are liquidity and capital preservation. Our investment policy allows us to maintain a portfolio of cash equivalents and short-term investments in a variety of securities, including U.S. government agencies, corporate bonds, commercial paper and money market funds. Our cash and investments as of December 31, 2006 consisted primarily of obligations of United States government agencies and money market funds.

Our senior secured notes have fixed interest payments, and, therefore, we are not subject to market risk with respect to this debt. Our line of credit bears interest at the prime rate of the financial institution from which we borrow, which is subject to change. However, interest expense in connection with this facility is not material.

We have no operations outside the United States, and almost all of our operating expenses and capital expenditures are denominated in United States dollars. We receive royalties on certain net product sales that are denominated in other currencies, primarily in Euro, but these royalties comprise a small portion of our revenues.

BUSINESS

Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies, we also explore potential new indications for known drug compounds. Since our inception in 2003, our experienced executive management team has built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $41.9 million in 2006, one product candidate for which an approvable letter has been issued by the U.S. Food and Drug Administration, or FDA, and five product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development.

Our most significant marketed product and late-stage product candidates are:

- *Xyrem (sodium oxybate oral solution).* Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our 55 person specialty sales force. We have significantly increased domestic net product sales of Xyrem since our acquisition of Orphan Medical, Inc. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB has commercially launched Xyrem in 11 countries.
- *Luvox CR (fluvoxamine maleate extended release capsules).* Our most advanced product candidate is Luvox CR, an extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor, or SSRI, which has been developed for the treatment of obsessive compulsive disorder, or OCD, and social anxiety disorder, or SAD. According to the National Institute of Mental Health, OCD and SAD affect approximately 2.2 million and 15 million adults in the United States, respectively. We obtained the U.S. marketing rights to Luvox CR from Solvay Pharmaceuticals, Inc., or Solvay, in January 2007. Solvay submitted a new drug application, or NDA, to the FDA for Luvox CR in April 2006, and, in February 2007, the FDA issued an approvable letter. Subject to the satisfaction of certain requirements set forth in the approvable letter and FDA approval, we expect to commence promotion of Luvox CR in the United States in the first quarter of 2008 through a significantly expanded specialty sales force. During 2007, we expect to make significant expenditures relating to the planned commercial launch of Luvox CR.
- *JZP-6 (sodium oxybate).* We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient, or API, in Xyrem, for the treatment of fibromyalgia syndrome, or FMS. According to the American College of Rheumatology, between two and four percent of the U.S. population suffers from FMS. There are currently no products approved by the FDA for the treatment of FMS. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of FMS. We are currently conducting two Phase III pivotal clinical trials and we expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. In Phase II clinical trials, JZP-6 demonstrated statistically significant improvement in the composite endpoint

accepted by the FDA and the European Agency for the Evaluation of Medicinal Products, or EMEA, as the primary endpoint for our Phase III pivotal clinical trials. Subject to successful completion of Phase III clinical trials, we plan to submit an NDA for JZP-6 by late 2009. If our NDA is approved by the FDA, we would expect to market JZP-6 in the United States to rheumatologists and other specialists who treat FMS patients through an expanded specialty sales force. We have granted UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.

In addition to our product candidates in late-stage development, our clinical development pipeline consists of the following product candidates:

- *JZP-4 (Type IIa sodium channel antagonist).* JZP-4, a controlled release formulation of an anticonvulsant that is in the same chemical class as Lamictal (lamotrigine), an antiepileptic drug, or AED, marketed by GlaxoSmithKline, or GSK, is being developed for the treatment of epilepsy and bipolar disorder. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy, and, according to the National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder.
- *JZP-8 (benzodiazepine).* JZP-8, a novel formulation incorporating a benzodiazepine, is being developed for the treatment of acute repetitive seizure clusters, or RSCs, in refractory epilepsy patients. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are refractory to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience RSCs.
- *JZP-7 (dopamine agonist).* JZP-7, a novel formulation incorporating a dopamine agonist, is being developed for the treatment of restless legs syndrome, or RLS. According to the RLS Foundation, up to 10% of the U.S. population suffers from RLS.
- *JZP-2 (benzodiazepine).* JZP-2, a fast-acting formulation of a benzodiazepine, is being developed for the acute treatment of panic attacks associated with panic disorder. According to the National Institute of Mental Health, approximately six million people in the United States suffer from panic disorder in any given year.

We have an ongoing program for generating, identifying and conducting feasibility studies for new product candidates. Our JZP-2, JZP-7 and JZP-8 product candidates resulted from this program. Several other product candidates identified through this program are in various stages of early development, including the use of sodium oxybate, the API in Xyrem, for the treatment of movement disorders. In addition, as part of our lifecycle management activities, we are conducting activities directed to developing new forms of sodium oxybate.

Our executive management team has substantial experience in developing and commercializing novel therapeutic products. During their ten years working together as part of the executive management team at ALZA Corporation, a pharmaceutical company acquired by Johnson & Johnson in 2001, our executive management team participated in the successful development and commercialization of a broad portfolio of products and product candidates to address specialized markets.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry and, over the longer term, in additional specialty therapeutic areas. Key elements of our strategy to achieve this goal include:

- *Focusing on specialty markets of neurology and psychiatry.* We will continue to focus our activities in specialty markets, particularly neurology and psychiatry, where our specialty sales force can establish strong relationships with the relatively small number of healthcare providers who write a large percentage of prescriptions for the indications we target. We have targeted neurology and psychiatry because we believe that these therapeutic areas provide numerous opportunities to improve

upon existing treatments and to commercialize the products we develop through our commercial organization. In the future, we may seek to expand into additional specialty markets in which we believe there are attractive opportunities to develop novel therapies and to leverage our commercial organization.

- *Expanding and leveraging our focused U.S. sales and marketing capabilities.* We currently have a focused and experienced 55 person specialty sales force promoting Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists. We expect to expand and leverage this sales force to promote and sell additional products for target indications in which specialists significantly influence the market. For example, we expect to significantly expand our commercial organization, including our sales force, to market Luvox CR to psychiatrists in the United States, subject to receipt of FDA approval. We intend to complete our ongoing Phase III clinical trials of JZP-6 for the treatment of FMS and, subject to regulatory approval, to market this product in the United States to rheumatologists and potentially, through a co-promotion arrangement or contract sales organization, to primary care physicians. For international markets, we intend to establish commercialization partnerships with other pharmaceutical companies to accelerate the introduction of our products outside of the United States and to maximize the commercial opportunity for these products.
- *Mitigating risks and reducing the costs and time associated with the development and commercialization of products.* We seek to mitigate the risks and reduce the costs and time associated with product development by focusing on known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products. We intend to continue to apply rigorous development criteria designed to provide us with the basis to make efficient development decisions with respect to each of our product candidates as early as possible in the development process. We also seek to structure our development and commercial relationships, including our strategic licenses and acquisitions of products and product candidates, to minimize financial risk until we can effectively demonstrate a significant likelihood of commercial success.
- *Continuing to expand our product portfolio.* We will continue to identify and develop through our internal research and development efforts product candidates that we believe have significant commercial potential. We will also seek to continue to acquire and in-license product candidates and products to complement our portfolio, enabling us to make efficient use of our commercial organization. We continually assess our existing portfolio to ensure a mix of late-stage and earlier-stage opportunities, advancement of product candidates in our target markets and a balance of expected risk and return.
- *Leveraging the expertise of our experienced executive management team.* We intend to continue to leverage the expertise of our experienced executive management team in developing and commercializing novel therapeutic products. We will also seek to capitalize on our executive management team's expertise in identifying and pursuing the most effective mix of financings and collaborations to address our capital needs and limit the risk profile of our product pipeline. Since our inception, we have raised over $400 million from a range of sources, including equity, debt and development financings, and we have engaged in various collaborations related to our product candidates to limit our product development risk.

Products and Product Candidates

Product/Product Candidate	API/Mechanism of Action	Primary Indication(s)	Status	Commercialization Rights
Xyrem	Sodium oxybate	Cataplexy and excessive daytime sleepiness in patients with narcolepsy	Marketed	U.S. and countries not licensed to UCB or Valeant
Antizol	Fomepizole	Ethylene glycol and methanol poisoning	Marketed	Worldwide
Luvox CR	Fluvoxamine maleate	Obsessive compulsive disorder Social anxiety disorder	Approvable letter issued	U.S.
Luvox	Fluvoxamine maleate	Obsessive compulsive disorder	Approvable letter issued	U.S.
JZP-6	Sodium oxybate	Fibromyalgia syndrome	Phase III	U.S. and countries not licensed to UCB
JZP-4	Type IIa sodium channel antagonist	Epilepsy Bipolar disorder	Phase I/II	Worldwide
JZP-8	Benzodiazepine	Repetitive seizure clusters	Phase I/II	Worldwide
JZP-7	Dopamine agonist	Restless legs syndrome	Phase I/II	Worldwide
JZP-2	Benzodiazepine	Panic attacks	Phase I/II	Worldwide

Marketed Products

Xyrem (sodium oxybate oral solution)

Xyrem is a sodium oxybate oral solution approved in the United States for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy. Sodium oxybate, the API in Xyrem, is a formulation of g-hydroxybutyrate, an endogenous neurotransmitter and metabolite of g-aminobutyric acid. Xyrem is currently the only FDA-approved treatment for both cataplexy and excessive daytime sleepiness in patients with narcolepsy. In 2006, our net product sales of Xyrem were $29.0 million.

Market Opportunity

Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles normally. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. The primary symptoms of narcolepsy include excessive daytime sleepiness, cataplexy, sleep paralysis, hallucinations and fragmented nighttime sleep. These symptoms can lead to a variety of complications, such as limitations on education and employment opportunities, driving or machine accidents, difficulties at work resulting in disability, forced retirement or job dismissal, and depression.

Cataplexy. Cataplexy, the sudden loss of muscle tone, is the most well-recognized symptom of narcolepsy. According to a 1996 article published in *Neurologic Clinics*, cataplexy is present in between 60% and 100% of patients with narcolepsy. Cataplexy can range from slight weakness or a drooping of the face to the complete loss of muscle tone and it is often triggered by strong emotional reactions such as laughter, anger or surprise.

Excessive Daytime Sleepiness. Excessive daytime sleepiness is the most common symptom of narcolepsy and is present in all narcolepsy patients. Excessive daytime sleepiness results in the individual becoming drowsy or falling asleep, often at inappropriate times and places.

Attributes of Xyrem

Xyrem is the only product approved by the FDA to treat both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Xyrem is administered at night and quickly metabolized so that during the daytime, very little of the active drug is present in the patient. Xyrem has a well established safety profile. Phase III clinical trial results indicated that Xyrem significantly increased daytime wakefulness and reduced cataplexy attacks in patients with narcolepsy. Approximately 80% of patients in Phase III clinical trials maintained concomitant stimulant use.

Product Development

In June 2005, we obtained the rights to Xyrem as a result of our acquisition of Orphan Medical. Initial FDA approval for Xyrem as a treatment for cataplexy in patients with narcolepsy was obtained in July 2002. In November 2005, the FDA approved a supplemental NDA, or sNDA, for the treatment of excessive daytime sleepiness in patients with narcolepsy.

Commercialization

We promote Xyrem in the United States through our 55 person specialty sales force. Pursuant to an agreement originally executed in 2003 and subsequently amended, we have licensed to UCB the exclusive right to register and market Xyrem for the treatment of narcolepsy in 54 countries throughout Europe, South America, the Middle East and Asia in exchange for milestone and royalty payments to us. Pursuant to the original agreement, UCB and its predecessor paid upfront and milestone payments totaling $7.5 million in connection with Xyrem for the treatment of narcolepsy. UCB has commercially launched the product in 11 countries and we expect additional commercial launches in 2007. In October 2005, the EMEA approved the product for the treatment of cataplexy in adult patients with narcolepsy, and in March 2007, the EMEA approved the product for the treatment of narcolepsy with cataplexy in adult patients. In December 2006, we licensed to Valeant the Canadian marketing rights to Xyrem for the treatment of narcolepsy, subject to our right to later reacquire these rights. We expect Valeant to launch the product in Canada in 2007.

In June 2006, we significantly expanded the scope of our agreement with UCB to cover JZP-6, our product candidate for the treatment of FMS in exchange for additional upfront and milestone payments. We are entitled to additional commercial milestone payments of up to $8.0 million specifically associated with Xyrem and royalties on all commercial sales of Xyrem and JZP-6 by UCB under this amended agreement. The term of our agreement with UCB, as it applies to Xyrem, extends to the later of the expiration of our associated patent rights in the territories covered by the agreement or ten years from the date of EMEA approval to commercially promote and distribute the product for the treatment of narcolepsy, subject to automatic extension unless and until UCB terminates the agreement upon not less than 12 months' notice. UCB may terminate our agreement for any reason upon 18 months' notice. We are responsible for supplying Xyrem to UCB and Valeant in exchange for supply price payments. Beginning in 2008, if we are materially unable to comply with our obligations to supply Xyrem to UCB, UCB has the right under certain circumstances to terminate our agreement upon nine months' notice.

The FDA has granted Xyrem orphan drug exclusivity in the United States for both cataplexy and excessive daytime sleepiness in patients with narcolepsy. This provides marketing exclusivity in the United States until July 2009 for the cataplexy indication and November 2012 for the excessive daytime sleepiness indication, which exclusivity periods run concurrently with a period of five-year new chemical entity exclusivity period expiring in July 2007. In addition to orphan drug exclusivity, Xyrem is covered by a formulation patent that is listed in the FDA's approved drug products with therapeutic equivalence evaluation document, or Orange Book, and expires in 2019, and a process patent that expires in 2019. The Orange Book, among other things, lists drug products approved by the FDA and identifies applicable patent and non-patent marketing exclusivities. The listing of our formulation patent in the Orange Book may require potential competitors to certify as to non-infringement or invalidity of the patent prior to FDA approval of their product candidates.

We believe that the strict manufacturing and distribution controls imposed by the FDA and the U.S. Drug Enforcement Administration, or DEA, on sodium oxybate, the API in Xyrem, and the complicated risk management procedures required to market and sell the product may make it difficult for other companies to manufacture and market generic formulations of Xyrem. Since Xyrem is classified as a Schedule III controlled substance and approved under the FDA's regulations under Subpart H, its distribution and promotion in the United States is strictly controlled. Unlike typical pharmaceutical products that are distributed by numerous pharmacies, Xyrem is distributed in the United States by a central pharmacy, which is the only source through which Xyrem can be obtained in the United States. Distribution is governed by the FDA's Subpart H regulations and complies with risk-management controls approved by the FDA with input from the DEA and other law enforcement agencies. Every shipment of Xyrem is subject to stringent safeguards to ensure that it reaches only individuals for whom it has been legitimately prescribed. A patent application covering this distribution system is currently pending and, if issued, would expire in 2022. We have contracted separately with third parties to supply the sodium oxybate used to produce Xyrem and to manufacture the product. We rely on a single source for our supply of sodium oxybate. Quotas from the DEA are required in order to manufacture and package sodium oxybate. Since the DEA typically grants quota on an annual basis and requires a detailed submission and justification for the request, obtaining a DEA quota is a difficult and time consuming process.

Other Treatments

As an alternative to Xyrem, cataplexy is often treated with tricyclic antidepressants and SSRIs, although none of these compounds has been approved by the FDA for the treatment of cataplexy. The use of these drugs can often result in somnolence, which exacerbates excessive daytime sleepiness already experienced by all patients with narcolepsy. Other treatments for excessive daytime sleepiness in patients with narcolepsy consist primarily of stimulants and wakefulness promoting agents, including Provigil (modafinil), the only other FDA-approved product for the treatment of excessive daytime sleepiness in patients with narcolepsy.

Antizol (fomepizole)

Antizol, an injectable formulation of fomepizole, is the only FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. According to the 2005 annual report of the American Association of Poison Control Centers, more than 6,000 exposures to ethylene glycol were reported in the United States in 2005, resulting in 41 fatalities. More than 2,300 exposures to methanol were reported in the United States in 2005, resulting in 13 fatalities. If ingested, ethylene glycol, commonly found in antifreeze, and methanol, commonly found in windshield wiper fluid, can lead to death or permanent, serious physical damage. When administered promptly after ingestion of either of these poisons, Antizol inhibits the formation of toxic metabolites and helps prevent renal damage or death. Guidelines issued by the American Academy of Clinical Toxicologists have established Antizol as the standard of care for such poisonings.

In 2006, our net product sales of Antizol were $12.5 million. We obtained the rights to Antizol in connection with our acquisition of Orphan Medical. Orphan Medical had obtained the worldwide rights to develop and market Antizol through a sublicense agreement with Mericon Investment Group. The license expires in July 2013, subject to a five-year renewal option that may be exercised by either party. We pay Mericon quarterly royalties on sales of Antizol through the duration of the sublicense.

Antizol is primarily used in a hospital setting, and we estimate that over one-third of all U.S. hospitals with emergency rooms currently stock the product. We market the product primarily to hospitals and emergency rooms. In addition to domestic sales, Antizol is marketed by our distributors in Canada and Israel.

We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisonings in dogs. In 2006, our net product sales of Antizol-Vet were $313,000.

Product Candidates

Luvox CR (fluvoxamine maleate extended release capsules)

Luvox CR, an extended release formulation of fluvoxamine maleate, developed by Solvay in collaboration with Elan Pharma International Limited, or Elan, is an SSRI for which we are seeking approval from the FDA for the treatment of obsessive compulsive disorder, or OCD, and social anxiety disorder, or SAD. Luvox, an immediate release formulation of fluvoxamine maleate, was previously approved by the FDA and marketed by Solvay for the treatment of OCD, and generic fluvoxamine remains one of the leading treatments for the disorder. Luvox CR incorporates extended release beads designed to provide delivery of fluvoxamine with lower peak plasma levels compared to the immediate-release formulation. In February 2007, the FDA issued an approvable letter for Luvox CR setting forth certain conditions necessary for receiving approval to market Luvox CR for the treatment of OCD and SAD. Subject to satisfaction of the conditions set forth in the approvable letter and approval by the FDA, we expect to commence promotion of Luvox CR in the first quarter of 2008.

Market Opportunity

Obsessive Compulsive Disorder (OCD). OCD is a chronic anxiety disorder characterized by persistent, unwanted thoughts, or obsessions, and repetitive behaviors or rituals, or compulsions. According to the National Institute of Mental Health, OCD affects approximately 2.2 million adults in the United States. According to an article published in the *International Journal of Clinical Practice*, it is estimated that 60% of patients with OCD worldwide receive no treatment for their disorder. As physicians have improved their ability to recognize symptoms, the number of diagnosed cases of OCD has increased by 78% from 1995 to 2005, as measured by the 2005 Physicians Drug and Diagnosis Audit, or PDDA, conducted by Verispan, Inc. Patients with OCD use rituals to help control anxiety related to their obsessive thoughts, and these rituals become disruptive to their daily life. While these patients often realize that their obsessions and compulsions are irrational or excessive, they frequently have little or no control over them. Typical obsessions include concerns with dirt, germs and contamination, fear of acting on violent or aggressive impulses or feeling overly responsible for the safety of others. Rituals adopted by OCD patients may provide them with transient relief from anxiety, but the rituals do not provide sustained comfort. Frequently, the rituals become so overwhelming that patients are unable to function normally in their daily lives. Symptoms of OCD typically appear in childhood, adolescence or early adulthood. According to an article published in the *Journal of Clinical Psychiatry*, a significant portion of OCD patients are believed to have one or more concomitant psychiatric disorders, such as depression or social anxiety disorder.

Social Anxiety Disorder (SAD). SAD is characterized by the fear and avoidance of social or performance situations where patients feel that others may scrutinize them and they may embarrass themselves. According to the National Institute of Mental Health, SAD affects approximately 15 million adults in the United States. Despite the prevalence of the disorder, social anxiety disorder remains underdiagnosed and undertreated by clinicians. SAD patients have anticipatory anxiety about these situations, and this anxiety can become so pronounced that patients cannot function normally in their daily lives. Social anxieties can be limited to a particular situation or apply to a variety of situations. In addition to anxiety, patients experience physical symptoms including blushing, sweating, trembling, and nausea. Symptoms of SAD typically appear in childhood or adolescence with a mean age of onset of approximately 13 years, and the symptoms are often preceded by a history of social inhibition or shyness. According to an article published in the *Journal of Clinical Psychiatry*, mood and other anxiety disorders are prevalent among SAD patients.

Current Treatments

SSRIs have become the standard treatment for anxiety disorders, including OCD and SAD. According to the Pharmaceutical Audit Suite, or PHAST, published by Wolters Kluwer Health, more than 142 million total prescriptions were written for SSRIs and serotonin-norepinephrine reuptake inhibitors, or SNRIs, in the United States in 2006, accounting for approximately $16 billion in sales. Since the approval of Prozac (fluoxetine) in the

United States in 1987, the use of SSRIs and SNRIs has increased dramatically due to their efficacy and reduced side effect profile relative to previously approved antidepressants. Based on available market data, we estimate that the majority of SSRI and SNRI prescriptions are for the treatment of depression and that OCD and SAD constitute approximately three percent of total SSRI and SNRI prescriptions.

There are currently five SSRI products approved by the FDA for the treatment of OCD, including fluvoxamine, the generic formulation of Luvox. The use of these various agents for the treatment of OCD has varied over the past ten years. Based on PDDA data, we estimate that fluvoxamine use represented approximately 11% of total drug usage for the treatment of OCD in 2005. Prior to the introduction of generic fluvoxamine in 2001, Luvox was considered one of the preferred SSRIs for the treatment of OCD, with what we estimate, based on PDDA data, to be 21% of total drug usage for the treatment of OCD in 1999. Generic competitors are currently available for the three SSRIs most commonly prescribed for the treatment of OCD.

There are currently four products that are approved by the FDA for the treatment of SAD. The existence of co-morbid psychiatric disorders is an important consideration in the selection of the pharmacologic agents to treat SAD. For these patients, an SSRI or SNRI with demonstrated efficacy in multiple indications is the preferred treatment option. Generic competitors are currently available for the two SSRIs most commonly prescribed for the treatment of SAD.

Although SSRIs have a favorable side-effect profile compared to other classes of agents, the current SSRI products used to treat OCD and SAD, particularly those formulated for immediate release, all have significant adverse side effects. Adverse side effects associated with SSRIs include nausea, sleep disturbances, sexual dysfunction, weight gain, adverse drug interactions, risk of hypertension and, in adolescents, increased suicidal tendencies. SSRIs are known to have little effect on patients' disease condition during the initial six to eight weeks of therapy. As a result, multiple psychotropic drugs are often prescribed during this time period to provide patients with more immediate relief. Additional adverse effects associated with immediate release formulations of SSRIs include significant incidence of nausea and reduced compliance as a result of multiple daily dosing.

Attributes of Luvox CR

We believe that there is a significant market opportunity for the reintroduction of the Luvox brand for the treatment of OCD, and its introduction for the treatment of SAD, and that Luvox CR offers a compelling opportunity to improve upon existing formulations of fluvoxamine in treating these disorders. Fluvoxamine, the API in Luvox, is already a broadly prescribed therapy for the treatment of OCD. The market potential for fluvoxamine is demonstrated by its significant ongoing prescription rates for the generic formulation despite the absence of active marketing and sales activity for Luvox since 2001. No extended release fluvoxamine products have been approved by the FDA, and if approved by the FDA, Luvox CR would be the first fluvoxamine product approved for the treatment of SAD.

In a Phase III clinical trial for OCD, patients taking Luvox CR demonstrated a statistically significant improvement compared to patients receiving placebo as assessed by the Yale-Brown Obsessive Compulsive Scale, or Y-BOCS, as early as week two of the trial. In Phase III clinical trials for SAD, patients receiving Luvox CR demonstrated statistically significant improvement compared to patients receiving placebo as assessed by the Liebowitz Social Anxiety Scale, or LSAS, total score as early as week four of the trial. Patients taking Luvox CR also did not show an increase in hypertension.

We believe the once-a-day dosing regimen afforded by the extended release formulation of Luvox CR could significantly improve compliance and patient acceptability. Furthermore, we believe that Luvox CR has a favorable tolerability profile as a result of its altered pharmacokinetic profile and lower maximum plasma concentration of fluvoxamine.

Product Development

In January 2007, we licensed the exclusive U.S. rights to Luvox CR and Luvox from Solvay. Solvay submitted an NDA for Luvox CR in December 2000. As a result of difficulties associated with manufacturing large-scale batches of the product candidate, Solvay and Elan mutually agreed to withdraw the NDA for Luvox CR in June 2001. We believe that Solvay and Elan have adequately addressed these manufacturing difficulties and that Elan, the party responsible for the manufacturing of Luvox CR, will be able to manufacture the product in commercial quantities. In April 2006, Solvay resubmitted the NDA for Luvox CR for treatment of OCD and SAD. In February 2007, the FDA issued an approvable letter for Luvox CR. The approvable letter sets forth the requirements that must be met in order for the FDA to approve Luvox CR for marketing in the United States. The requirements set forth in the approvable letter include the completion of certain toxicology studies on the impurities that are generated by fluvoxamine maleate, the API in Luvox CR, and the submission of additional information relating to the chemistry, manufacturing and controls section of the NDA. The approvable letter also requires Solvay to re-analyze certain data set forth in the NDA. We will need to commit to conducting certain post-approval, or Phase IV, studies, including a pediatric study for SAD and a long-term safety study. We (with Solvay) will also need to finalize product labeling with the FDA. Pursuant to the terms of our license agreement, Solvay is responsible for conducting the additional toxicology studies and submitting the information to the FDA. We expect that Solvay will submit its response to the requests in the approvable letter to the FDA in the second or third quarter of 2007.

OCD Phase III Clinical Trial Results. Solvay conducted one Phase III pivotal clinical trial with Luvox CR for the treatment of OCD. Since fluvoxamine is currently approved for the treatment of OCD, the FDA only requires one successful Phase III trial for approval of the extended release formulation for use in OCD. In the 12-week, multi-center, placebo-controlled trial of roughly 250 patients, patients receiving Luvox CR demonstrated statistically significant improvements on the Y-BOCS compared to patients receiving placebo as early as week two of the study. The Y-BOCS is a ten-item clinician-administered scale developed to assess the severity of obsessions and compulsions, independent of the number and type of obsessions or compulsions present. The Y-BOCS has been the primary outcome measure in virtually all multi-center clinical trials of SSRIs for the treatment of OCD. The Luvox CR group mean total change from baseline on the Y-BOCS was -8.5 compared to -5.6 for placebo, for a p-value of $p<0.001$ at 12 weeks. A p-value is a statistical measure intended to predict when a result of a study is likely the result of an intended outcome, such as a drug having a therapeutic effect in a clinical trial, and not by random chance. A value of $p<0.05$ means the likelihood of a result by chance is less than five in 100. As p-values become smaller, the probability of a result by chance decreases and the standard convention is to consider a p-value of 0.05 or less a statistically significant result.

SAD Phase III Clinical Trial Results. The effectiveness of Luvox CR in the treatment of SAD was demonstrated in two 12-week, multi-center, placebo-controlled Phase III clinical trials in over 550 patients. In both studies, the effectiveness of Luvox CR compared to placebo was evaluated on the basis of change from baseline in the LSAS. The LSAS was the first clinician-administered scale to evaluate the wide range of social situations that are difficult for individuals with social phobia. The scale contains 24 items, 13 concerning performance anxiety and 11 concerning social situations. The LSAS is used as an outcome measure in most pharmacological trials for social phobia, as well as in many studies of cognitive-behavioral treatment. Patients receiving Luvox CR demonstrated statistically significant improvement compared to patients receiving placebo as assessed by the LSAS total score as early as week four of the study. In one study of 279 patients, mean change in LSAS total score was -26.7 for Luvox CR and -12.9 for placebo, for a p-value of $p<0.001$ at 12 weeks. In the other study of 300 patients, mean change in LSAS total score was -36.1 for Luvox CR and -27.3 for placebo, for a p-value of $p<0.02$ at 12 weeks.

Commercialization Strategy

If Luvox CR is approved by the FDA, we anticipate launching it in the United States in the first quarter of 2008. To effectively market Luvox CR we intend to expand our already established specialty sales force. A

substantial majority of prescriptions for the treatment of OCD and SAD are written by psychiatrists. We believe that this concentration provides an attractive, focused market opportunity for us.

Through our agreement with Solvay, we have the right to distribute and market Luvox CR in the United States. Solvay retains the right to market Luvox CR outside of the United States. In the event that Solvay decides not to pursue marketing of Luvox CR in any countries to which it has retained rights, we have a right of first offer with respect to any license of rights to market Luvox CR in such countries. Solvay is responsible for providing us with the API necessary to manufacture Luvox CR. In addition, Solvay has assigned its rights under its agreement with Elan. Pursuant to that agreement, Elan will manufacture Luvox CR for us in commercial quantities. We paid Solvay $2.0 million upon signing of the agreement, and will pay Solvay up to $138.0 million in developmental and commercial milestone payments associated with Luvox CR as well as royalties on commercial sales. Up to $41.0 million of the milestone payments are payable at or prior to commercial launch. We will pay Elan royalties on commercial sales and supply price payments.

We expect Luvox CR will receive three years of new marketing exclusivity if approved by the FDA. In addition, a patent application has been filed by Elan covering the orally administered formulation of extended-release fluvoxamine that requires the release of fluvoxamine over a period of not less than 12 hours. If this patent issues in the United States, it could provide patent protection for this formulation until 2020.

Luvox (fluvoxamine maleate)

Luvox, an immediate release formulation of fluvoxamine maleate, was approved by the FDA for the treatment of OCD in 1994. However, Solvay withdrew Luvox from the market in 2002 as a result of discrepancies in data identified by the FDA. Solvay resubmitted the NDA for Luvox to the FDA in June 2002 and received an approvable letter from the FDA in February 2004. In May 2006, Solvay submitted its response to the approvable letter and in November 2006, the FDA issued a second approvable letter for Luvox setting forth certain conditions necessary for receiving approval to market Luvox for treatment of OCD. The second approvable letter requires certain standard toxicology studies on the impurities present in the drug product to be conducted. No carcinogenicity or other studies are required. Because numerous generic formulations of fluvoxamine are on the market, and no serious adverse events associated with toxicity have been reported, we do not believe that the required testing poses a significant risk for the ultimate approval of Luvox. Pursuant to the terms of our license agreement, Solvay is responsible for conducting the additional tests and submitting the information to the FDA. We expect that Solvay will submit the additional data to the FDA in the second or third quarter of 2007.

Through our agreement with Solvay, we have the right to distribute and market Luvox in the United States, but we have not yet determined if we will market Luvox if it is approved by the FDA for the treatment of OCD. In the event we market Luvox in the United States, we will make a milestone payment to Solvay of $2.0 million and royalties on commercial sales.

JZP-6 (sodium oxybate)

We are developing a liquid dosage form of sodium oxybate, the API in Xyrem, for the treatment of fibromyalgia syndrome, or FMS. We are currently conducting two Phase III pivotal clinical trials for JZP-6 in FMS. We have completed a Phase II clinical trial for JZP-6 in which FMS patients taking sodium oxybate achieved a statistically significant improvement compared to placebo on the composite endpoint accepted by the FDA and the European Agency for the Evaluation of Medicinal Products, or EMEA, as the primary endpoint for our Phase III pivotal clinical trials.

Market Opportunity

FMS is a chronic pain syndrome defined by widespread pain lasting at least three months. According to the American College of Rheumatology, or ACR, between two and four percent of the U.S. population suffers from

FMS. FMS is believed to be a central nervous system condition. In addition to pain, FMS patients often suffer from a combination of muscle stiffness, fatigue, disturbed sleep, restless legs and impaired memory and concentration. Although physicians do not understand the cause of FMS, it may be triggered by physical trauma, emotional stress or infection. The criteria established by the ACR for the classification of fibromyalgia require the application of pressure at 18 different points on the body and measurement of pain induced by such pressure. If at least 11 of the 18 points are painful and have been painful for three months, the patient is diagnosed with FMS.

Current Treatments

There are currently no products approved by the FDA for the treatment of FMS. In clinical practice, a variety of drugs is often prescribed to address individual symptoms of FMS, including antidepressants, opioid analgesics, COX-2 analgesics, muscle relaxants, hypnotics and anticonvulsants. Based on available market data, we estimate that more than 5.7 million total prescriptions were written to treat FMS symptoms in 2005, of which approximately 42% were for antidepressants, 29% were for opioids and 18% were for muscle relaxants. Physicians generally prescribe one or more drug therapies based on the dominant symptom or symptoms of FMS in a particular patient. This “polypharmacy” approach has significant limitations as none of the current therapies used to address the symptoms of FMS is designed to comprehensively address the syndrome and many of its related symptoms.

In addition to JZP-6, there are currently four programs that have completed or are in Phase III clinical development for the treatment of FMS. These include Lyrica (pregabalin), an anticonvulsant being developed by Pfizer, which has previously been approved by the FDA for the treatment of partial seizures, post herpetic neuralgia and diabetic peripheral neuropathy. In December 2006, Pfizer submitted a supplemental NDA seeking FDA approval of Lyrica for the treatment of FMS, or certain symptoms associated with FMS.

Attributes of JZP-6

JZP-6 is being developed to provide an effective treatment for FMS and pain associated with FMS. While the primary symptom of FMS is widespread pain, fatigue and mood disturbances are also common symptoms. We believe that JZP-6 will provide significant advantages over current treatments by offering improvements in pain relief and physical functioning that may address the overall syndrome and many of its related symptoms.

The primary endpoint for our pivotal trials measuring the efficacy of JZP-6 is a composite of change from baseline in three co-primary measures of patients’ pain: the pain visual analog scale, the fibromyalgia impact questionnaire and patient global impression of change. This composite of change endpoint was accepted by the FDA and the EMEA as the primary endpoint for our Phase III pivotal clinical trials. An efficacious response by a patient in the trial for each of the three co-primary measures of patient’s pain is defined as a greater than 20% reduction in the pain visual analog scale, a greater than 20% improvement in the fibromyalgia impact questionnaire score and a self-rating describing themselves as “very much better” or “much better” on the patient global impression of change.

Product Development

Phase II Clinical Trial Results. In August 2005, we completed a Phase II clinical trial of 195 patients with FMS in a randomized, double blind placebo-controlled safety and efficacy study. Patients received a fixed dose of 4.5 grams of sodium oxybate divided into two nightly doses, 6.0 grams of sodium oxybate divided into two nightly doses, or placebo twice nightly for an eight-week period. The primary endpoint for this trial was a composite of change from baseline in three co-primary measures of patients’ pain: the pain visual analog scale, the fibromyalgia impact questionnaire and patient global impression of change. Secondary endpoints included measurement of a tender point count, tender point index, Epworth sleepiness scale, Jenkins scale for sleep, global score on the functional outcome of sleep questionnaire, severity of fatigue and clinical global impression of

change. The Phase II clinical trial demonstrated significant improvement in the composite endpoint results in both dosage strengths. In addition, the study demonstrated significant improvements in secondary measures of fatigue, sleepiness and sleep quality. There were no unexpected adverse events in the study.

JZP-6 also demonstrated statistically significant improvement in each of the co-primary measures that comprise the composite endpoint in either one or both dosage strengths. The visual analog scale is a self-assessed measurement of pain in which zero is no pain at all and 100 is the worst pain experienced. The baseline pain for the FMS patients in the trial was roughly 65. Patients on both dosage strengths experienced a statistically significant improvement in pain at eight weeks. In addition, the study measured pain throughout the day. Patients experienced pain relief in the morning, at midday and in the evening, which represents an important clinical benefit for patients. The fibromyalgia impact questionnaire is a 20 item questionnaire that asks patients to assess their ability to complete activities of daily living such as shopping, preparing a meal, visiting or doing housework. The total score is normalized to 100 points. The questionnaire also has a single inquiry about anxiety and depression. The Phase II clinical trial results demonstrated that patients on both dosage strengths experienced statistically significant improvement in the total score. The patient global impression of change is a seven point scale on which patients assess how much better or worse they feel throughout the trial. Our Phase II clinical trial demonstrated a statistically significant improvement for this measure for patients on the 4.5 gram dose.

Ongoing Phase III Clinical Trials. We are currently conducting two Phase III pivotal clinical trials, each in approximately 525 patients, and an open-label continuation trial in approximately 500 patients, to confirm the results of our Phase II clinical trial. The primary endpoint in both of our ongoing Phase III pivotal clinical trials is the same as in our Phase II clinical trial. Each of our Phase III pivotal clinical trials involve randomized, double blind studies. The first of these trials commenced in September 2006 and is ongoing in 45 sites located exclusively in the United States. As of March 2007, more than 80 patients had been enrolled in the first trial. Screening for the second trial commenced in February 2007. Between 30% and 40% of the subjects for the second trial are expected to reside outside of the United States. We expect to commence clinical pharmacology studies in the third quarter of 2007. Dosages being studied in the ongoing Phase III trials are consistent with our Phase II clinical trial with the exception that subjects assigned to higher doses will be titrated from the lower dose to the higher dose over a period of two weeks. We believe this titration regimen will provide for a more clinically relevant comparison of the relative safety, efficacy and tolerability of the dosages being studied and assist in determining the benefits, if any, of flexible dosing.

We expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. Based on the results of our Phase III clinical trials and further discussions with the FDA, we will determine when and if we will submit an NDA for JZP-6 for the treatment of FMS or other, more limited indications such as pain associated with FMS.

Commercialization Strategy

If JZP-6 is approved by the FDA, we believe that the majority of prescriptions for the product to treat FMS will be written by rheumatologists, with some prescriptions written by neurologists and psychiatrists. Because the number of rheumatologists in the United States is relatively small we expect to be able to expand our specialty sales force to promote JZP-6 in the United States. We may also identify one or more pharmaceutical company partners or a contract sales organization to promote JZP-6 to other audiences, including primary care physicians who are treating patients with FMS.

In 2006, we amended our agreement with UCB to grant UCB the right to market JZP-6 for the treatment of FMS in 54 countries throughout Europe, South America, the Middle East and Asia. Under the terms of the amended agreement, UCB paid us $15.0 million to develop and commercialize JZP-6 for the treatment of FMS. We are entitled to up to $40.0 million in additional developmental milestone payments associated with JZP-6, and additional commercial milestone payments of up to $100.0 million related primarily to JZP-6 for the treatment of FMS as well as Xyrem for the treatment of narcolepsy. The term of our agreement with UCB, as it

applies to JZP-6, extends to the earlier of the expiration of our associated patent rights in the territories covered by the agreement or ten years from the date of EMEA approval to commercially promote and distribute the product for the treatment of FMS, subject to automatic renewals of one year unless UCB provides 12 months' notice. UCB may terminate our agreement for any reason upon 18 months' notice. We are responsible for supplying commercial quantities of JZP-6 to UCB in exchange for supply price payments. If we are unable to comply with our obligations to supply JZP-6 to UCB, UCB has the right under certain circumstances to terminate our agreement upon nine months' notice.

Pursuant to our agreement with Valeant, Valeant has the option to acquire the rights to market JZP-6 for treatment of FMS in Canada if it is then commercializing Xyrem for narcolepsy in Canada, subject to our right to later reacquire these rights. We are responsible for supplying commercial quantities of JZP-6 to Valeant in exchange for supply price payments.

We have contracted with our current supplier of sodium oxybate for the manufacture of Xyrem and our current manufacturer of Xyrem for the manufacture of JZP-6 to conduct our clinical trials. Because sodium oxybate is a controlled substance requiring manufacturing quotas from the DEA, our current API supplier and contract manufacturer may be unable to provide us with sufficient clinical and commercial quantities. In cooperation with our manufacturing partners, we intend to seek increased quotas from the DEA to supply and manufacture JZP-6 to complete our clinical trials and, if it is approved, to commercialize the product. We expect that the manufacture and distribution of JZP-6 will be subject to similar restrictions and risk management policies as our existing processes in place for Xyrem. These restrictions may present a meaningful obstacle for the eventual introduction of generic versions of JZP-6.

We expect that our patents associated with Xyrem will cover JZP-6. In addition, we hold a U.S. patent and patents in 29 other countries that cover the use of sodium oxybate for the treatment of FMS. Our U.S. patent expires in 2017 and our patents in other countries expire in 2018.

JZP-4 (type IIa sodium channel antagonist)

We are developing JZP-4, a controlled release formulation of an anticonvulsant that has a similar chemical structure and is believed to work through the same mechanism of action as Lamictal (lamotrigine), an AED marketed by GSK for the treatment of epilepsy and bipolar disorder. We have completed a number of preclinical studies related to antiepileptic activity that suggest that JZP-4 may be effective in treating epilepsy. Subject to the results of proposed and ongoing proof of concept clinical trials and long-term toxicology studies, we plan to commence a Phase II clinical trial for the treatment of epilepsy in the fourth quarter of 2007.

Market Opportunity

Epilepsy. Epilepsy, a seizure disorder, is a serious neurological illness affecting people of all ages. A seizure is a sudden surge of electrical activity in the brain that affects how a person feels or acts for a short time. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy. In 2005, over $6.0 billion of seizure disorder drugs were sold in the United States as measured by PHAST. Based on available market data, we estimate that approximately $2.3 billion of these drugs were prescribed for the treatment of epilepsy. Epileptic seizures are classified as either partial or generalized depending upon how the abnormal brain activity begins. Partial seizures begin with abnormal activity in part of the brain. Generalized seizures have abnormal activity in most or all of the brain. Seizure symptoms may be hardly noticeable, such as confusion and staring, or totally disabling, such as convulsions, shaking and falling down.

Bipolar disorder. Bipolar disorder is a serious, chronic psychiatric disorder that causes shifts in mood, energy and ability to function. According to National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder. Based on available market data, we estimate that approximately $1.3 billion of AEDs were sold for the treatment of bipolar disorder in 2005. People suffering

from the condition experience dramatic mood swings from an overly “high” mania state to an overly “low” or depressive state, often with periods of normal mood in between.

Current Treatments

Epilepsy. Seizures in epileptic patients are typically controlled by treatment with one or more AEDs. In 2006, there were approximately 6.2 million prescriptions written for Lamictal. While up to 70% of epilepsy patients respond to therapy and become seizure-free with chronic treatment with AEDs, the remaining patients fail treatment either because the drugs do not stop their seizures or because they cannot tolerate the side effects. These patients usually end up taking more than one AED at a time and are therefore more susceptible to adverse effects associated with drug interactions. Selection of the appropriate medication for an individual patient is typically based on the type of epilepsy from which a patient suffers, the genesis of the disease, and the patient’s age and gender. Although there are many AEDs available that work in different ways, no single drug is well tolerated and controls seizures in a majority of patients. Side effects and tolerability are significant concerns with currently available AEDs. Side effects for most AEDs include sleepiness, cognitive impairment, weight gain, mood changes, dizziness and potentially life-threatening immune system reactions. Doctors generally start their patients on a low dose of AEDs, and titration may take up to 12 weeks. During this period, patients often continue to suffer from epileptic seizures of various severities.

Bipolar Disorder. Bipolar disorder is typically managed with drugs from a variety of different drug classes. While treatment duration varies for each patient, treatment of an acute phase of the disease generally lasts approximately three weeks, followed by a continuation phase of approximately two months, and a maintenance phase of up to 18 months. Generally, the treatment is chosen based on the mood episode a patient is experiencing at a particular time. Treatment for patients in the acute mania phase includes a mood stabilizer, such as lithium or an AED, in addition to an atypical antipsychotic. Patients in the acute depression phase are initially treated with Lamictal, Symbyax (olanzapine and fluoxetine HCl capsules), a combination antidepressant and antipsychotic, or Seroquel (quetiapine), an antipsychotic. For long-term maintenance, the same medications that were effective for the acute episodes are typically continued at the same or lower doses. Many of the drugs currently used in the treatment of bipolar disorder have adverse drug interactions affecting each drug’s efficacy and safety as well as adverse tolerability and other negative side effects such as sedation, weight gain, involuntary movements, tremors, stiffness orthostatic hypotension and potentially life-threatening immune system reactions. These side effects discourage compliance and may pose serious health risks. Antidepressants are also often prescribed to treat bipolar depression, even though they are not indicated for such treatment and there is a risk that such antidepressants can induce a bipolar patient to switch from depression to mania.

Attributes of JZP-4

We are developing JZP-4 to address the unmet needs of epilepsy and bipolar patients for a more effective drug with fewer side effects. JZP-4 is being developed as a controlled release product that can be taken once a day, with a shorter titration schedule and fewer interactions with other drugs than current therapies. JZP-4 is an AED in the same class of drugs, and with a similar chemical structure, as Lamictal, an AED approved for the treatment of epilepsy and bipolar disorder. We believe that JZP-4 has the potential to provide the demonstrated efficacy of AEDs in treating these conditions while addressing many of the adverse side effects of current therapies. In particular, our preclinical studies indicate that the potency of the API in JZP-4 may result in a favorable titration schedule. Preclinical studies also indicate that the API in JZP-4 may have fewer adverse drug interactions than current therapies. In addition, we believe that JZP-4 has the potential to be effective in treating bipolar depression with minimal sedation, low incidence of weight gain and limited risk of causing mood switches, thereby addressing a significant unmet need for this patient population.

Product Development

We acquired the worldwide rights to the API in JZP-4 from GSK in 2004. Since acquiring these rights, we have completed our initial early preclinical development to show that the drug can be formulated as a once-a-day

product, and we have conducted preclinical studies which we believe have confirmed studies previously completed by GSK showing that the drug has central nervous system activity comparable to Lamictal and other AEDs.

Our preclinical development has involved a range of preclinical studies to determine how the API in JZP-4 works and its potential to treat epilepsy. The results of these studies indicate that the API in JZP-4 is a broad spectrum AED with sodium and calcium channel blockade as the primary mechanisms of action. From the results of these preclinical studies, we believe that the API has a broad spectrum of activity, which indicates that it may be effective in treating many different types of epileptic seizures. We have also completed preliminary toxicology and pharmacology tests that have provided early indications of safety and a low potential for adverse drug interactions. These tests involved exposure of more than 170 healthy individuals in eight single dose and multi-dose studies. We have developed a prototype formulation and tested it in a pharmacokinetic study which confirmed the viability of once-a-day dosing. Following completion of this study we began development activities for a once-a-day formulation, and we currently expect to complete these activities in the second quarter of 2007.

In addition, we have designed two proof of concept clinical trials designed to provide evidence of therapeutic activity for JZP-4. The first, a transcranial magnetic stimulation, or TMS study, is a non-randomized, single blind placebo-controlled study of JZP-4 in healthy volunteers with lamotrigine as a positive control. The TMS model is predictive of central nervous system activity and efficacy in partial epilepsy. Three patients have completed all four doses of JZP-4 and one dose of lamotrigine. Results from these subjects indicate potential central nervous system activity of JZP-4. The second, a photic-induced paroxysmal electroencephalographic study in photosensitive epilepsy patients, is a non-randomized, single blind placebo-controlled study of JZP-4 with a higher dose of baseline AED as a positive control. The results from this study will provide information on the effective dose range in epilepsy patients and possible adverse drug interactions with other AEDs. Initial dosing for this study is expected to commence in the second quarter of 2007.

Our completed toxicology studies support use of the API in JZP-4 in humans for up to 13 weeks. We began additional long-term toxicology studies in March 2006 and expect to receive results from these studies in the first quarter of 2007. Subject to satisfactory results from these long-term toxicology studies, a proof of concept study and certain drug-drug interaction studies, we plan to commence a Phase II clinical trial of JZP-4 for the treatment of epilepsy beginning in the fourth quarter of 2007. We believe that the initial results of this trial will be available in early 2008.

Commercialization Strategy

Our strategy to market any approved formulation of JZP-4 will depend on the outcome of our clinical trials, the nature of any indications it is approved to treat and the specialties of the physicians most likely to prescribe the product. Any such sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both. Pursuant to our agreement with GSK, we have paid upfront and developmental milestone payments of $5.0 million and will pay up to $113.5 million in additional developmental and commercial milestone payments as well as royalties on commercial sales.

We have identified and are in the process of qualifying a manufacturer to produce clinical trial materials for all late-stage clinical trials of JZP-4. Following development of our once-a-day formulation we intend to seek a contract manufacturer for commercial quantities of JZP-4.

The composition of matter for the API in JZP-4 is covered by patents in 53 countries, including in the United States and countries in Europe. The U.S. composition of matter patent expires in 2018. In addition, we hold a U.S. patent covering the use of the API in JZP-4 for the treatment of bipolar disorder that expires in 2018, and a U.S. patent that covers the process used for preparing of the API in JZP-4 that expires in 2021. A patent application covering a sustained release composition for delivering the API in JZP-4 is currently pending in the U.S. Patent and Trademark Office and would, if issued, expire in 2026.

JZP-8 (benzodiazepine)

We are developing JZP-8, a novel formulation incorporating a benzodiazepine, for the treatment of acute repetitive seizure clusters, or RSCs, in refractory epilepsy patients. Our initial development work suggests that JZP-8 has the potential to provide fast-acting efficacy associated with currently available therapies while addressing problems associated with administration that make such therapies largely impractical to employ.

Market Opportunity

RSCs are increased bouts of acute seizure activity within a 24-hour period in adults and a 12-hour period in children. According to the Epilepsy Foundation, approximately 2.7 million people in the United States have epilepsy. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are refractory to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience RSCs. RSCs are an acute and repetitive reaction to the abnormal electrical activity that builds up and releases in the brain. Epilepsy patients and their caregivers are usually able to distinguish between a regular seizure and the first seizure in a RSC series.

Current Treatments

Quick identification and treatment of the first seizure in an RSC can often interrupt the ongoing seizure, reduce its severity, and prevent subsequent seizures. Interrupting a seizure cluster may also lessen the severity of post-seizure symptoms. In the United States, Diastat (diazepam rectal gel), marketed by Valeant Pharmaceuticals, is the only FDA-approved, acute, outpatient treatment for patients on stable AEDs who experience bouts of increased seizure activity. In 2005, sales of Diastat totaled approximately $65.0 million in the United States as measured by PHAST. Although generally considered safe and effective for patients of all ages, because it is a rectally administered gel, Diastat is currently prescribed primarily for children under the age of ten and is administered to them by caregivers or parents. Diastat's rectal administration has made it impractical for most of the adolescent, adult and elderly population. Patients with seizure clusters who do not use Diastat have no other outpatient treatment option and thus, typically, are treated through the emergency medical system.

In paramedic and hospital settings, benzodiazepines such as diazepam, lorazepam and midazolam are the first line of emergency treatment for patients presenting with RSCs. These medications, all available in intravenous formulations, provide rapid onset of action and known efficacy for patients. However, treatment in an emergency room setting results in significantly increased costs to the individual and health care system as well as the potential increased harm and danger associated with the time delay in obtaining emergency treatment.

Attributes of JZP-8

JZP-8 is being developed as a fast-acting benzodiazepine. Like other benzodiazepines, JZP-8 will likely be regulated as a controlled substance by the DEA if approved for marketing by the FDA. We believe JZP-8 will provide a far easier means of administration while patients are actively seizing and a delivery form that will be accepted for use by adolescent and adult patients as well as caregivers. In addition, we believe that JZP-8 will have sufficient duration of action to prevent recurrence of subsequent seizures.

Product Development

We have completed development activities to select the API for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We have completed a pharmacokinetics and pharmacodynamics, or PK/PD, study in healthy volunteers. Pharmacokinetics deals with the absorption, distribution, biotransformation and excretion of drugs, which, coupled with dosage, determines the concentration of a drug in the body and, hence, the intensity of its effects as a function of time. Pharmacodynamics is the study of the biochemical and physiological effects of drugs and their mechanisms of

action. These PK/PD results demonstrate that JZP-8 has an acceptable plasma profile. We plan to commence a Phase II clinical trial of JZP-8 for the treatment of acute RSCs in refractory epilepsy patients in the third quarter of 2007. Subject to satisfactory results from this clinical trial, we plan to begin Phase III clinical trial activities for JZP-8 in the first quarter of 2008.

Commercialization Strategy

Our marketing strategy for JZP-8 will depend on the outcome of our clinical trials, the nature of any indications JZP-8 is approved to treat and the specialties of the physicians most likely to prescribe the product. Any sales efforts may involve the utilization of our internal sales force, collaborations with sales partners or a combination of both.

We have entered into a license agreement with a technology provider for the development of JZP-8. Pursuant to that agreement we are obligated to make clinical and commercial milestone payments to this provider and to pay royalties on commercial sales of the product.

We have contracted for the supply of the API in JZP-8 in sufficient quantities to complete clinical trials. We intend to seek a contract manufacturer for commercial quantities of JZP-8.

JZP-7 (dopamine agonist)

We are developing JZP-7, a novel formulation incorporating a dopamine agonist, for the treatment of restless legs syndrome, or RLS. Based on our preclinical development, we believe JZP-7 offers the potential for effective treatment of RLS while reducing adverse effects associated with existing treatments.

Market Opportunity

RLS is a common, underdiagnosed neurological disorder that frequently manifests itself as a sleep disorder. According to the RLS Foundation, up to ten percent of the U.S. population suffers from RLS. A study published in the May 2004 issue of Sleep Medicine indicated that approximately ten percent of patients visiting primary care physicians in the United States and four European countries experience RLS symptoms at least weekly, with approximately two percent of patients visiting primary care physicians suffering from symptoms severe enough to disrupt their quality of life. Patients who suffer from RLS experience an irresistible urge to move their legs. This urge is usually accompanied by unpleasant sensations of burning, creeping, tugging or tingling inside the patients' legs, ranging in severity from uncomfortable to painful. These RLS-related symptoms typically begin or worsen during periods of rest or inactivity, particularly when lying down or sitting, and may be temporarily relieved by movement such as walking or massaging the legs. Symptoms often worsen at night and disturbed sleep is a common result of RLS. Left untreated, RLS may cause exhaustion, daytime fatigue, inability to concentrate and impaired memory.

Current Treatments

Requip (ropinirole), marketed by GSK, was the first product approved by the FDA for the treatment of RLS. In 2006, Mirapex (pramipexole), marketed by Boehringer Ingelheim, was approved by the FDA for the treatment of moderate to severe RLS. Schwarz Pharma is also developing a rotigotine transdermal patch for RLS under the trade name Neupro, for which the FDA has issued an approvable letter. The symptoms of RLS are also currently treated by dopamine agonists, opioids, benzodiazepines and anticonvulsants. While Requip and Mirapex have been shown to be effective in treating RLS, they have been associated with adverse side effects, including nausea, vomiting, orthostatic hypotension and sudden onset of sleep. In a study of patients on dopamine agonist treatments reported in the *Archives of Neurology*, approximately 48% of patients who had continued treatment for longer than six months developed augmentation, with approximately 22% of these patients having severe augmentation. Augmentation refers to the earlier onset of symptoms, increase in symptoms, and spread of

symptoms to involve other extremities. For these patients, physicians often add an additional, earlier dose of the existing treatment, increase dosage, or switch to an alternative therapy.

Attributes of JZP-7

We are developing JZP-7 as a novel formulation incorporating a dopamine agonist to provide the effective treatment of RLS while addressing adverse events associated with current therapies. We are seeking to develop JZP-7 as a once daily formulation. We believe this formulation has the potential to significantly reduce the titration schedule associated with Requip and adverse events associated with more commonly dosed products, including nausea, vomiting, orthostatic hypotension and sudden onset of sleep. JZP-7 may also have the potential to provide extended relief of RLS for those patients needing longer symptom relief than may be provided by existing oral therapies.

Product Development

We have completed development activities to select the API for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We have completed a PK/PD study in healthy volunteers. These PK/PD results demonstrated that our JZP-7 product has a PK profile consistent with our development target. We intend to conduct an additional PK study in 2007 prior to commencing Phase II clinical trials for the treatment of RLS.

Commercialization Strategy

Our marketing strategy for JZP-7 will depend on the outcome of our clinical trials, the nature of any indications JZP-7 is approved to treat, and the specialties of the physicians most likely to prescribe the product. Any sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both.

We have entered into an agreement with technology provider to conduct feasibility studies associated with the formulation and method of delivery of JZP-7. If these studies are successful we have the option to enter into a license agreement that will provide for clinical milestone payments to this technology provider and royalties on commercial sales of the product.

We have contracted for the supply of the API in JZP-7 in sufficient quantities to complete clinical trials. We intend to seek a contract manufacturer for commercial quantities of JZP-7.

JZP-2 (benzodiazepine)

We are developing JZP-2, a fast-acting formulation of a benzodiazepine, for the acute treatment of panic attacks associated with panic disorder. There are currently no products approved for the treatment of panic attacks.

Market Opportunity

A panic attack is an isolated period of intense fear or discomfort that is associated with numerous symptoms, including feelings of imminent danger, heart palpitations, sweating, shortness of breath, chest pain, nausea and a fear of dying. According to the National Institute of Mental Health, approximately 6.0 million people in the United States suffer from panic disorder in any given year. A panic attack typically starts without warning, building to maximum intensity within ten to 15 minutes. A panic attack is distinguished from other forms of anxiety by its intensity and its sudden occurrence. To be diagnosed with panic disorder, patients must have two or more unexpected panic attacks, and develop persistent concerns or worries about having subsequent attacks.

Current Treatments

Currently there is no drug approved for the acute treatment of a panic attack. The current leading treatments for panic disorder are SSRIs taken prophylactically on a daily basis. Alternative treatments to SSRIs include drugs in other classes, such as benzodiazepines, tricyclic antidepressants, or TCAs and monoamine oxidase inhibitors, or MAOs. Based on PDDA data, we estimate that approximately 27% of drug usages for benzodiazepines are taken on an "as-needed" basis, indicating a level of ineffective treatment with SSRIs alone. In addition, patients initiating SSRI drug therapy often take several weeks to experience therapeutic effects and during this time, continue to experience panic attacks. According to an article published in the American Family Physician, approximately 30% of patients treated with SSRIs cannot tolerate these medications or will have an unfavorable or incomplete response to treatment. Adverse side effects associated with SSRIs include nausea, sleep disturbances, sexual dysfunction, weight gain, adverse drug interactions, risk of hypertension and, in adolescents, increased suicidal tendencies. Benzodiazepines are well-understood drugs, and physicians continue to prescribe them despite the availability of a number of SSRIs in the market. Long-term benzodiazepine use is considered to be safe and effective treatment for panic disorder patients who have no history of substance abuse. We believe that some physicians may prescribe oral benzodiazepines for patients to take as needed, when they feel a panic attack coming on, or during an attack. However, because the symptoms of a panic attack typically have a rapid onset and last less than 30 minutes, we believe oral benzodiazepines often do not work quickly enough to provide patients with adequate relief. In addition, patients treated with benzodiazepines often develop increased tolerance to the activity of the drug over time, requiring substantial increases in dosages to obtain and maintain clinical effectiveness.

Attributes of JZP-2

We believe that JZP-2 has the potential to provide rapid relief from a panic attack and enable the patient to quickly resume functionality after an attack. We are developing JZP-2 as a fast-acting formulation of a benzodiazepine. Like other benzodiazepines, JZP-2 will likely be regulated as a controlled substance by the DEA if approved for marketing by the FDA. We believe JZP-2 could be used as an adjunct to chronic treatment with SSRIs. In addition, severe panic disorder patients continue to experience multiple panic attacks per week while on chronic SSRI treatment and other therapies. JZP-2 could be used as a supplementary therapy on an as-needed basis for patients on chronic medication who continue to experience panic attacks. Patients using JZP-2 on an as-needed basis would have reduced exposure to the API. As a result, we believe that JZP-2 has the potential to have a favorable tolerance profile.

Product Development

We have developed a target formulation for JZP-2 and plan to commence one or more clinical trials of JZP-2 in 2007 with this formulation for the acute treatment of panic attacks associated with panic disorders. The first clinical trial will evaluate how fast the product gets into the bloodstream in human subjects. Subject to the successful completion of this trial, the second clinical trial will evaluate the product in patients undergoing an artificially induced panic attack. If successful, the outcome from these clinical trials will be used to determine clinical endpoints for Phase II and Phase III clinical trials. The focus of our completed and ongoing preclinical studies on JZP-2 has been to identify the preferred formulation of benzodiazepine and most effective delivery technology while balancing sedative effects, panic alleviation, risks and speed of action.

Commercialization Strategy

Our marketing strategy for JZP-2 will depend on the outcome of our clinical trials, the nature of any indications JZP-2 is approved to treat, and the specialties of the physicians most likely to prescribe the product. Any sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both.

We have entered into an agreement with a technology provider to conduct feasibility studies associated with the formulation and method of delivery of JZP-2. If these studies are successful, we have the option to enter into a license agreement that will provide for the payment of royalties to our technology provider on commercial sales.

We currently have an agreement for supply of the API in JZP-2 and ongoing manufacture of the drug product in sufficient quantities to complete clinical trials. Pursuant to our agreement, our technology provider will manufacture commercial quantities of JZP-2.

New Product Candidate Identification and Development

Our program for identifying and developing new product candidates involves many disciplines across our company. We identify unmet patient needs and opportunities to improve upon existing therapies through market research, new product planning activities, interactions with thought leaders in neurology and psychiatry, and research and development. Once a potential product candidate is identified, we conduct feasibility activities to help us determine whether we can develop a product that may improve patients' lives. In developing new product candidates, we access a broad range of available technologies and services from third party providers to help ensure our products will have the characteristics we desire.

Through our feasibility activities and proof of concept studies, we attempt to determine if a product candidate has the requisite pharmacological activity, would be valuable to patients and healthcare providers, and could be developed within the timeframe and budget we find acceptable. We focus our early-stage activities on obtaining proof of concept for each product candidate at a relatively low cost, in order to eliminate some risks before we incur significant development expenses for the product candidate. We then execute a development program with a defined set of goals for the product candidate, and a series of development milestones by which we measure progress. The activities at each stage of development are designed to reduce risk, so that as a product candidate moves through the stages of development we can more confidently allocate additional resources to it.

Our program is designed to shorten the development cycle for our product candidates as compared with most new chemical entities. Because we generally work with known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, we can often move from a proof of concept study directly into pivotal clinical trials. In certain cases where we develop new formulations of existing marketed compounds, we may only be required to complete one Phase III clinical trial, rather than the two Phase III clinical trials generally required for new chemical entities. If we are able to complete product development with fewer clinical trials than are required for a new chemical entity, we may have lower costs of development and shorter development timelines.

Our JZP-2, JZP-7 and JZP-8 product candidates resulted from this program. We currently have several other product candidates identified through this program in various stages of early development, including the use of sodium oxybate, the API in Xyrem, for the treatment of movement disorders. We are also conducting activities intended to develop new dosage forms of sodium oxybate.

We expect to begin more early-stage projects than will progress into later-stage development. If a product candidate does not successfully meet our requirements at any stage of development, we terminate the project. We also review our portfolio periodically to ensure that we have a balanced mix of product candidates moving into later stages of development across our therapeutic areas on a regular basis.

Sales and Marketing

We have a specialty sales force consisting of 55 full-time sales professionals, including five regional sales managers, who promote Xyrem. Our sales representatives are experienced, with an average of five years of specialty selling experience. Our sales management team has an average of nine years of specialty sales

management experience. Our sales force calls on neurologists, psychiatrists, pulmonologists and sleep specialists. In the near term, we anticipate more than doubling our specialty sales force to prepare for the commercial launch, subject to receipt of FDA approval, of Luvox CR, with additional sales professionals focusing on psychiatrists who treat OCD and SAD. If JZP-6 is approved by the FDA, we expect to further expand our specialty sales force to include additional sales professionals who would focus on rheumatologists treating FMS.

We have established marketing and commercial operations departments to support our sales efforts. Our marketing and commercial operations departments consist of marketing professionals who are responsible for brand management and market research, and commercial operations professionals who are responsible for business analytics and commercial technology, commercial administration, training and development, pharmacy relations and patient affairs. Our marketing team develops and implements brand strategies to maximize product uptake and adoption with our target physician audiences in accordance with our approval labeling. We expect to significantly expand commercial operations in 2007 to accommodate promotional and marketing activities necessary to prepare for the potential commercial launch of Luvox CR, including the addition of a trade relations team and a national accounts, or managed care, team. We also employ numerous third party vendors, such as advertising agencies, market research firms and suppliers of marketing and other sales support related services.

Medical Affairs Department

We have a Medical Affairs department consisting of approximately ten professionals that provides medical information regarding our products to health care providers and handles related medical issues. Our Medical Affairs Department answers medical questions from health care professionals and provides them with publications on request. The medical education activities of our Medical Affairs department focus on grants for continuing medical education activities and the creation of enduring educational materials. Our five Medical Affairs scientists, who are based around the country, foster our relationships with thought leaders and work with investigators who are interested in exploring novel uses of our products.

Manufacturing

We do not have, and do not intend to establish in the near term, any of our own manufacturing capability for our products or product candidates, or their APIs, or the capability to perform packaging of our products. We have entered into manufacturing and supply agreements with third parties for our marketed products. For each of our marketed products, we utilize a single supplier for the API and a separate drug product manufacturer. We have agreements with these suppliers and manufacturers for Xyrem, Antizol and Antizol-Vet. We supply all quantities of Xyrem to UCB and Valeant. We believe that qualified suppliers and manufacturers for our marketed products will continue to be available in the future, at a reasonable cost to us, although there can be no assurance that this will be the case.

We are also seeking, have identified or have entered into manufacturing and supply arrangements for our product candidates. In particular, if Luvox CR is approved, Solvay will supply us with the API and Elan will manufacture our commercial requirements for Luvox CR. We have contracted with our existing contract manufacturers of Xyrem for the API and drug product for our clinical requirements of JZP-6. As with Xyrem, we will be responsible for supplying JZP-6 to UCB and, if applicable, to Valeant. We are also seeking or have identified qualified suppliers and contract manufacturers for JZP-4, JZP-8, JZP-7 and JZP-2.

Because sodium oxybate is a controlled substance subject to manufacturing quotas by the DEA, our supplier and contract manufacturer of Xyrem and JZP-6 may be unable to provide us with sufficient quantities necessary to complete our clinical trials or, if approved, commercialize the product. The DEA requires substantial evidence and documentation of expected need before assigning quotas to manufacturers. Therefore, obtaining sufficient quotas can be very difficult and time consuming, which may provide a meaningful obstacle for the introduction of generic formulations of Xyrem and the eventual introduction of generic versions of JZP-6.

In an effort to minimize the risks associated with shortages of our products and product candidates for commercial and clinical trial needs, we have adopted a production planning program to assess and manage manufacturing logistics among the vendors supplying the required finished product components of API, drug product and packaging.

Manufacturers and suppliers of our products and product candidates are subject to the FDA's current Good Manufacturing Practices, or cGMP, requirements, DEA regulations and other rules and regulations prescribed by foreign regulatory authorities. We depend on our third party suppliers and manufacturers for continued compliance with cGMP requirements and applicable foreign standards.

Government Regulation

The testing, manufacturing, labeling, advertising, promotion, distribution, export and marketing of our products are subject to extensive regulation by governmental authorities in the United States and in other countries. In the United States, the FDA, under the Federal Food, Drug and Cosmetic Act, or FDCA, and its implementing regulations, regulates pharmaceutical products. Several of our products and product candidates are regulated as controlled substances and are subject to additional regulation by the DEA under the Controlled Substances Act. Failure to comply with applicable U.S. requirements may subject us to administrative or judicial sanctions, such as FDA refusal to approve pending NDAs, withdrawal of approval of approved products, warning letters, untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, civil penalties and/or criminal prosecution.

Drug Approval Process

To obtain FDA approval of a product candidate, we must, among other things, submit data supporting safety and efficacy as well as detailed information on the manufacture and composition of the product candidate and proposed labeling. The testing and collection of data and the preparation of necessary applications are expensive and time-consuming. The FDA may not act quickly or favorably in reviewing these applications, and we may encounter significant difficulties or costs in our efforts to obtain FDA approvals that could delay or preclude us from marketing our products.

The steps required before a drug may be approved for marketing in the United States generally include:

- preclinical laboratory tests and animal tests;
- submission to the FDA of an Investigational New Drug Application, or IND, for human clinical testing, which must become effective before human clinical trials commence;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug product for each indication;
- the submission to the FDA of an NDA;
- satisfactory completion of an FDA inspection of the manufacturing facilities at which the product is made to assess compliance with cGMP;
- potential FDA audit of the nonclinical and clinical trial sites that generated the data in support of the NDA; and
- FDA review and approval of the NDA.

Preclinical studies may include laboratory evaluations of the product chemistry, toxicity, and formulation, as well as animal studies to assess the potential safety and efficacy of the product candidate. The conduct of the preclinical tests and formulation of the compounds for testing must comply with federal regulations and requirements. The results of the preclinical studies, together with manufacturing information and analytical data, are submitted to the FDA as part of the IND, which must become effective before clinical trials may be

commenced. The IND will become effective automatically 30 days after receipt by the FDA, unless the FDA raises concerns or questions about the conduct of the clinical trials as outlined in the IND prior to that time. In this case, the IND sponsor and the FDA must resolve any outstanding concerns before clinical trials can proceed.

Clinical trials involve the administration of the product candidate to healthy volunteers or patients under the supervision of a qualified principal investigator. Clinical trials are conducted under protocols detailing the objectives of the study, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND. Clinical trials must be conducted in accordance with the FDA's good clinical practices requirements. Further, each clinical trial must be reviewed and approved by an independent institutional review board, or IRB, at or servicing each institution at which the clinical trial will be conducted. The IRB will consider, among other things, clinical trial design, patient informed consent, ethical factors, the safety of human subjects, and the possible liability of the institution. The FDA may order the partial, temporary or permanent discontinuation of a clinical trial at any time or impose other sanctions if it believes that the clinical trial is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial subjects. The IRB may also require the clinical trial at that site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or may impose other conditions.

Clinical trials typically are conducted in three sequential phases prior to approval, but the phases may overlap. A fourth, or post-approval, phase may include additional clinical studies. These phases generally include the following:

- *Phase I.* Phase I clinical trials involve the initial introduction of the drug into human subjects, frequently healthy volunteers. These studies are designed to determine the metabolism and pharmacologic actions of the drug in humans, the adverse effects associated with increasing doses, and, if possible, to gain early evidence of effectiveness. In Phase I, the drug is usually tested for safety, including adverse effects, dosage tolerance, absorption, distribution, metabolism, excretion and pharmacodynamic properties.
- *Phase II.* Phase II clinical trials usually involve studies in a limited patient population to evaluate the efficacy of the drug for specific, targeted indications, to determine dosage tolerance and optimal dosage, and to identify possible adverse effects and safety risks. Although there are no statutory or regulatory definitions for Phase IIa and Phase IIb, Phase IIa is commonly used to describe a Phase II clinical trial evaluating efficacy, adverse effects, and safety risks and Phase IIb is commonly used to describe a subsequent Phase II clinical trial that also evaluates dosage tolerance and optimal dosage. Some of our product candidates, particularly those using the same API as products already on the market, may be able to skip or have abbreviated Phase II studies.
- *Phase III.* If a compound is found to be potentially effective and to have an acceptable safety profile in Phase II (or sometimes Phase I) studies, the clinical trial program will be expanded to further demonstrate clinical efficacy, optimal dosage and safety within an expanded patient population at geographically dispersed clinical trial sites. Phase III studies usually include several hundred to several thousand patients. Generally, two adequate and well-controlled Phase III clinical trials are required by the FDA for approval of an NDA, but for some product candidates, particularly those using the same API as products already on the market, only one Phase III trial may be required.
- *Phase IV.* Phase IV clinical trials are studies required of or agreed to by a sponsor that are conducted after the FDA has approved a product for marketing. These studies are used to gain additional experience from the treatment of patients in the intended therapeutic indication and to document a clinical benefit in the case of drugs approved under accelerated approval regulations. If the FDA approves a product while a company has ongoing clinical trials that were not necessary for approval, a company may be able to use the data from these clinical trials to meet all or part of any Phase IV clinical trial requirement. These clinical trials are often referred to as Phase III/IV post approval clinical trials. Failure to promptly conduct Phase IV clinical trials could result in withdrawal of approval for products approved under accelerated approval regulations.

The applicant must submit to the FDA the results of the preclinical and clinical trials, together with, among other things, detailed information on the manufacture and composition of the product candidate and proposed labeling, in the form of an NDA, including payment of a user fee. The FDA reviews all NDAs submitted before it accepts them for filing and may request additional information rather than accepting an NDA for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA. Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act, or PDUFA, the FDA has ten months in which to complete its initial review of a standard NDA and respond to the applicant, and six months for a priority NDA. The FDA does not always meet its PDUFA goal dates for standard and priority NDAs. The review process and the PDUFA goal date may be extended by three months if the FDA requests or the NDA sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date. If the FDA's evaluations of the NDA and the clinical and manufacturing procedures and facilities are favorable, the FDA may issue either an approval letter or an approvable letter, which contains the conditions that must be met in order to secure final approval of the NDA. If and when those conditions have been met to the FDA's satisfaction, the FDA will issue an approval letter, authorizing commercial marketing of the drug for certain indications. If the FDA's evaluation of the NDA submission and the clinical and manufacturing procedures and facilities is not favorable, the FDA may refuse to approve the NDA and issue a not approvable letter. Sponsors that receive either an approvable letter or a not approvable letter may submit to the FDA information that represents a complete response to the issues identified by the FDA. Such resubmissions are classified under PDUFA as either Class 1 or Class 2. The classification of a resubmission is based on the information submitted by an applicant in response to an action letter. Under the goals and policies agreed to by the FDA under PDUFA, the FDA has two months to review a Class 1 resubmission, and six months to review a Class 2 resubmission. The FDA may also refer an application to the appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of the advisory committee.

The FDA has various programs, including fast track, priority review, and accelerated approval (Subpart H), that are intended to expedite or simplify the process for reviewing drugs, and/or provide for approval on the basis surrogate endpoints or restricted distribution. Generally, drugs that may be eligible for one or more of these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs, and those that provide meaningful benefit over existing treatments. We cannot be sure that any of our drug candidates will qualify for any of these programs, or that, if a drug does qualify, that the review time will be shorter than a standard review.

After approval, certain changes to the approved product, such as adding new indications, making certain manufacturing changes, or making certain additional labeling claims, are subject to further FDA review and approval. Obtaining approval for a new indication generally requires that additional clinical studies be conducted. We cannot be sure that any additional approval for new indications for any product will be approved on a timely basis, or at all.

Often times, even after a drug has been approved by the FDA for sale, the FDA may require that certain post-approval requirements be satisfied, including the conduct of additional clinical studies. If such post-approval conditions are not satisfied, the FDA may withdraw its approval of the drug. In addition, holders of an approved NDA are required to:

- report certain adverse reactions to the FDA;
- submit annual and periodic reports summarizing product information and safety data;
- comply with certain requirements concerning advertising and promotional labeling for their products; and
- continue to have quality control and manufacturing procedures conform to cGMP after approval.

The FDA periodically inspects the sponsor's records related to safety reporting and/or manufacturing facilities; this latter effort includes assessment of compliance with cGMP. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance. Discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved NDA, including withdrawal of the product from the market.

Section 505(b)(1) New Drug Applications

The approval process described above is premised on the applicant being the owner of, or having obtained a right of reference to, all of the data required to prove the safety and effectiveness of a drug product. This type of marketing application, sometimes referred to as a "full" or "stand-alone" NDA, is governed by Section 505(b)(1) of the FDCA. A Section 505(b)(1) NDA contains full reports of investigations of safety and effectiveness, which includes the results of preclinical studies and clinical trials, together with detailed information on the manufacture and composition of the product, in addition to other information.

Section 505(b)(2) New Drug Applications

As an alternate path to FDA approval of, for example, new indications or improved formulations of previously-approved products, a company may submit a Section 505(b)(2) NDA, instead of a "stand-alone" or "full" NDA filing under Section 505(b)(1). Section 505(b)(2) of the FDCA was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, otherwise known as the Hatch-Waxman Act. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. For example, the Hatch-Waxman Act permits the applicant to rely upon the FDA's findings of safety and effectiveness for an approved product. The FDA may also require companies to perform additional studies or measurements to support the change from the approved product. The FDA may then approve the new drug product for all or some of the label indications for which the referenced product has been approved, or for a new indication sought by the Section 505(b)(2) applicant.

To the extent that the Section 505(b)(2) applicant is relying on the FDA's findings for an already-approved drug product, the applicant is required to certify that there are no Orange Book-listed patents for that drug product or that for each Orange Book-listed patent that:

- the listed patent has expired;
- the listed patent has not expired, but will expire on a particular date and approval is sought after patent expiration; or
- the listed patent is invalid or will not be infringed by the manufacture, use or sale of the new product.

A certification that the new product will not infringe the already approved product's Orange Book-listed patents or that such patents are invalid is called a paragraph IV certification. If the applicant does not challenge the listed patents, the Section 505(b)(2) application will not be approved until all the listed patents claiming the referenced product have expired, as well as any additional period of exclusivity that might be obtained for completing pediatric studies pursuant to the FDA's written request. The Section 505(b)(2) application may also not be approved until any applicable non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the referenced product has expired.

If the applicant has provided a paragraph IV certification to the FDA, the applicant must also send notice of the paragraph IV certification to the holder of the NDA and the relevant patent holders once the 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a legal challenge to the paragraph IV certification. The filing of a patent infringement lawsuit within 45 days of their receipt of a paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA until the

earliest of 30 months, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the Section 505(b)(2) applicant. For drugs with five-year exclusivity, such as Xyrem, if an action for patent infringement is initiated after year four of that exclusivity period, then the 30-month stay period is extended by such amount of time so that 7.5 years has elapsed since the approval of the NDA with the five-year exclusivity period. This period could be extended by six months if the NDA sponsor obtains pediatric exclusivity. Thus, a Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its products only to be subject to significant delay and patent litigation before its products may be commercialized. Alternatively, if the listed patent holder does not file a patent infringement lawsuit within the required 45-day period, the applicant's 505(b)(2) NDA will not be subject to the 30-month stay.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, certain brand-name 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), 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 pathway permitted under the FDCA that we believe will maximize the commercial opportunities for these product candidates.

The Hatch-Waxman Act

Under the Hatch-Waxman Act, newly-approved drugs and indications may benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Act provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, meaning that the FDA has not previously approved any other new drug containing the same active moiety. The Hatch-Waxman Act prohibits the submission of an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA for another version of such drug during the five-year exclusive period; however, as explained above, submission of an ANDA or Section 505(b)(2) NDA containing a paragraph IV certification is permitted after four years, which may trigger a 30-month stay of approval of the ANDA or Section 505(b)(2) NDA. Protection under the Hatch-Waxman Act will not prevent the submission or approval of another "full" NDA; however, the applicant would be required to conduct its own preclinical and adequate and well-controlled clinical trials to demonstrate safety and effectiveness. The Hatch-Waxman Act also provides three years of marketing exclusivity for the approval of new and supplemental NDAs, including Section 505(b)(2) NDAs, for, among other things, new indications, dosages, or strengths of an existing drug, 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.

In addition to non-patent marketing exclusivity, the Hatch-Waxman Act amended the FDCA to require each NDA sponsor to submit with its application information on any patent that claims the API, drug product (formulation and composition), and method-of-use for which the applicant submitted the NDA and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. Generic applicants that wish to rely on the approval of a drug listed in the Orange Book must certify to each listed patent, as discussed above. We intend to submit for Orange Book listing all relevant patents for our product candidates, and to vigorously defend any Orange Book-listed patents for our approved drug products.

The Hatch-Waxman Act also permits a patent term extension of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, a patent term extension cannot extend the remaining term of a patent beyond a total of 14 years after the FDA approves a marketing application. The patent term extension period is generally equal to the sum of one-half the time between the effective date of an IND and the submission date of an NDA, and all of the time between the submission date of an NDA and the approval of that application, up to a total of five years. Only one patent applicable to an approved drug, that represents the first commercial marketing of that API, is eligible for the extension, and it

must be applied for prior to expiration of the patent. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for patent term extension. We will consider applying for a patent term extension for some of our patents, to add patent life beyond the expiration date, depending on our ability to meet certain legal requirements permitting such extension, and the expected length of clinical trials and other factors involved in the submission of an NDA.

Orphan Drug Designation and Exclusivity

Some jurisdictions, including Europe and the United States, may designate drugs for relatively small patient populations as orphan drugs. The FDA grants orphan drug designation to drugs intended to treat a rare disease or condition that affects fewer than 200,000 individuals in the United States or more than 200,000 individuals in the United States and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for this type of disease or condition will be recovered from sales in the United States for that drug. In the United States, orphan drug designation must be requested before submitting an application for marketing approval. An orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process. If a product which has an orphan drug designation subsequently receives the first FDA approval for the indication for which it has such designation, the product is entitled to orphan drug exclusivity, which means the FDA may not approve any other application to market the same drug for the same indication for a period of seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan exclusivity. Competitors may receive approval of different drugs or biologics for the indications for which the orphan product has exclusivity.

Xyrem is currently protected by five years of new chemical entity exclusivity, which expires in July 2007. The FDA designated and approved Xyrem as an orphan drug for each of cataplexy and excessive daytime sleepiness in patients with narcolepsy. The periods of orphan drug exclusivity, which run concurrently with the period of five-year new chemical entity exclusivity, expire in July 2009 and November 2012, respectively for cataplexy and excessive daytime sleepiness in patients with narcolepsy. We anticipate receiving three years of marketing exclusivity for Luvox CR if the FDA approves the marketing application for Luvox CR, and if the FDA determines that the requirements for granting three-year exclusivity are met.

Pediatric Exclusivity

The FDCA provides an additional six months of non-patent marketing exclusivity and patent protection for any such protections listed in the Orange Book for new or marketed drugs for specific pediatric studies conducted at the written request of the FDA. The Pediatric Research Equity Act of 2003, or PREA, authorizes the FDA to require pediatric studies for drugs to ensure the drugs' safety and efficacy in children. PREA requires that certain new NDAs or supplements to NDAs contain data assessing the safety and effectiveness for the claimed indication in all relevant pediatric subpopulations. Dosing and administration must be supported for each pediatric subpopulation for which the drug is safe and effective. The FDA may also require this data for approved drugs that are used in pediatric patients for the labeled indication, or where there may be therapeutic benefits over existing products. The FDA may grant deferrals for submission of data, or full or partial waivers from PREA. Unless otherwise required by regulation, PREA does not apply to any drug for an indication with orphan designation. We plan to work with the FDA to determine the need for pediatric studies for our product candidates, and may consider attempting to obtain pediatric exclusivity for some of our product candidates.

Fast Track Designation

The FDA's fast track program is intended to facilitate the development and to expedite the review of drugs that are intended for the treatment of a serious or life-threatening condition and that demonstrate the potential to address unmet medical needs. Under the fast track program, applicants may seek traditional approval for a product based on data demonstrating an effect on a clinically meaningful endpoint, or approval based on a well-established surrogate endpoint. The sponsor of a new drug candidate may request the FDA to designate the drug

candidate for a specific indication as a fast track drug at the time of original submission of its IND, or at any time thereafter prior to receiving marketing approval of a marketing application. The FDA will determine if the drug candidate qualifies for fast track designation within 60 days of receipt of the sponsor's request.

If the FDA grants fast track designation, it may initiate review of sections of an NDA before the application is complete. This so-called "rolling review" is available if the applicant provides and the FDA approves a schedule for the submission of the remaining information and the applicant has paid applicable user fees. The FDA's PDUFA review clock for both a standard and priority NDA for a fast track product does not begin until the complete application is submitted. Additionally, fast track designation may be withdrawn by the FDA if it believes that the designation is no longer supported by emerging data, or if the designated drug development program is no longer being pursued.

In some cases, a fast track designated drug candidate may also qualify for priority NDA review. When appropriate, we intend to seek fast track designation or priority review for our product candidates. We cannot predict whether any of our product candidates will obtain fast track or priority review designation, or the ultimate impact, if any, of these expedited review mechanisms on the timing or likelihood of the FDA approval of any of our product candidates.

Other Regulatory Requirements

In addition to regulation by the FDA and certain state regulatory agencies, the DEA imposes various registration, recordkeeping and reporting requirements, procurement and manufacturing quotas, labeling and packaging requirements, security controls and a restriction on prescription refills on certain pharmaceutical products under the Controlled Substances Act. A principal factor in determining the particular requirements, if any, applicable to a product is the actual or potential abuse profile. The DEA regulates drug substances as Schedule I, II, III, IV or V substances, with Schedule I substances considered to present the highest risk of substance abuse and Schedule V substances the lowest risk. Sodium oxybate in its base form is regulated by the DEA as a Schedule I controlled substance but when contained in a drug product approved by FDA it is regulated as a Schedule III controlled substance. Xyrem is a Schedule III controlled substance and JZP-6, along with certain of our early-stage product candidates, contains sodium oxybate. These product candidates, if approved for marketing by FDA, will also likely be Schedule III controlled substances. In addition, JZP-8, JZP-2 and certain of our early-stage product candidates will likely be regulated as controlled substances if approved for marketing by the FDA. Controlled substances are subject to DEA regulations relating to manufacturing, storage, distribution and physician prescription procedures, and the DEA regulates the amount of the scheduled substance that would be available for clinical trials and commercial distribution. Sodium oxybate, as a Schedule I substance, is subject to additional controls, including quotas on the amount of product that can be manufactured. As a Schedule III drug, Xyrem is subject to limitations on prescription refills. The third parties who perform our clinical and commercial manufacturing for Xyrem and JZP-6 have received necessary registrations from the DEA. The DEA periodically inspects facilities for compliance with its rules and regulations. Failure to comply with current and future regulations of the DEA could lead to a variety of sanctions, including revocation or denial of renewal of DEA registrations, fines, injunctions, or civil or criminal penalties, and could harm our business and financial condition.

We are also subject to a variety of foreign regulations governing clinical trials and the marketing of other products. Outside of the United States, our ability to market a product depends upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement vary widely from country to country. In any country, however, we will only be permitted to commercialize our products if the appropriate regulatory authority is satisfied that we have presented adequate evidence of safety, quality and efficacy. Whether or not FDA approval has been obtained, approval of a product by the comparable regulatory authorities of foreign countries must be obtained prior to the commencement of marketing of the product in those countries. The time needed to secure approval may be longer or shorter than that required for FDA approval. The regulatory approval and oversight

process in other countries includes all of the risks associated with regulation by the FDA and certain state regulatory agencies as described above.

Pharmaceutical Pricing and Reimbursement

In both U.S. and foreign markets, our ability to commercialize our products successfully, and to attract commercialization partners for our products, 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. Third party payors are increasingly challenging the prices charged for medicines and examining their cost effectiveness, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the cost effectiveness of our products. Even with studies, our products may be considered less safe, less effective or less cost-effective than existing products, and third party payors may not provide coverage and reimbursement for our product candidates, in whole or in part.

Political, economic and regulatory influences are subjecting the healthcare industry in the United States to fundamental changes. There have been, and we expect there will continue to be, legislative and regulatory proposals to change the healthcare system in ways that could significantly affect our business. We anticipate that the U.S. Congress, state legislatures and the private sector will continue to consider and may adopt healthcare policies intended to curb rising healthcare costs. These cost containment measures include:

- controls on government funded reimbursement for drugs;
- controls on healthcare providers;
- challenges to the pricing of drugs or limits or prohibitions on reimbursement for specific products through other means;
- reform of drug importation laws; and
- expansion of use of managed care systems in which healthcare providers contract to provide comprehensive healthcare for a fixed cost per person.

We are unable to predict what additional legislation, regulations or policies, if any, relating to the healthcare industry or third party coverage and reimbursement may be enacted in the future or what effect such legislation, regulations or policies would have on our business. Any cost containment measures, including those listed above, or other healthcare system reforms that are adopted could have a material adverse effect on our ability to operate profitably.

We may also face competition for our products from lower priced products from foreign countries that have placed price controls on pharmaceutical products. Proposed federal legislative changes may expand consumers' ability to import lower priced versions of our and competing products from Canada. Further, several states and local governments have implemented importation schemes for their citizens, and, in the absence of federal action to curtail such activities, we expect other states and local governments to launch importation efforts. The importation of foreign products that compete with our own products could negatively impact our business and prospects.

Patents and Proprietary Rights

We actively seek to patent, or to obtain licenses to or to acquire third party patents, to protect our products, inventions and improvements that we consider important to the development of our business. We own seven issued U.S. patents. In addition to the issued U.S. patents, we own or have rights to 13 pending U.S. patent applications and more than 100 issued and pending foreign patents and patent applications. Our owned and licensed patents and patent applications cover formulations of our products and product candidates, uses of our products and product candidates to treat particular conditions, drug delivery technologies and delivery profiles

relating to our products and product candidates and methods for producing our products and product candidates. However, patent protection is not available for the APIs in most of our products and product candidates, including Xyrem, Luvox CR and JZP-6. Patents extend for varying periods according to the date of the patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country. The patents and patent applications that relate to our products and product candidates include the following:

- *Xyrem*. Xyrem is covered by a U.S. formulation patent that will expire on December 22, 2019. Our Xyrem formulation patent has issued in 17 other countries and will expire on December 22, 2019. It is currently pending in three additional countries. Xyrem is also covered by a U.S. patent that covers a process for preparing the formulation that expires on December 22, 2019. We also have filed a U.S. patent application with claims covering the method for distributing sodium oxybate using a centralized distribution system that, if issued, would expire on December 17, 2022.
- *Luvox CR*. Luvox CR is covered by a U.S. patent application filed by Elan with claims covering the orally administered formulation of extended release fluvoxamine that requires the release of fluvoxamine over a period of not less than 12 hours that, if issued, would expire on May 10, 2020.
- *JZP-6*. We expect that our current patents associated with Xyrem will be applicable to JZP-6. We also own patents with claims covering the use of sodium oxybate for the treatment of FMS that will expire in the United States on August 29, 2017 and in 29 other countries on August 27, 2018.
- *JZP-4*. JZP-4 is covered by a U.S. composition of matter patent that we acquired from GSK that will expire on February 26, 2018. The JZP-4 composition of matter is covered by patents in 52 other countries that expire in 2018. In addition, we hold a U.S. patent that covers the use of JZP-4 for the treatment of bipolar disorder, pain or functional bowel disorder that will expire on February 26, 2018, and a U.S. patent that covers the preparation of the API in JZP-4 that will expire on May 2, 2021. Further, we have filed a U.S. patent application with claims covering a sustained release composition for delivering JZP-4 that, if issued, would expire on February 14, 2026.
- *JZP-8*. We have filed a provisional U.S. patent application with claims covering JZP-8. A patent claiming priority from this application would, if issued, expire in 2027. The claims do not cover the JZP-8 composition of matter.
- *JZP-7*. We have filed a provisional U.S. patent application with claims covering JZP-7. A patent claiming priority from this application would, if issued, expire in 2027. The claims do not cover the JZP-7 composition of matter.
- *JZP-2*. We have an option for an exclusive license to four U.S. formulation patents covering JZP-2 from the technology provider with which we are conducting feasibility studies associated with JZP-2. These patents will expire on August 1, 2017.

Because the patent positions of pharmaceutical companies are highly uncertain and involve complex legal and factual questions, the patents we own and license, or any further patents we may own or license, may not prevent other companies from developing similar or therapeutically equivalent products or ensure that others will not be issued patents that may prevent the sale of our products or require licensing and the payment of significant fees or royalties. In addition, we cannot be certain that any of our patent applications, or those of our licensors, will result in issued patents. Furthermore, to the extent that any of our future products or methods is not patentable or infringe the patents of third parties, or in the event that our patents or future patents fail to give us an exclusive position in the subject matter claimed by those patents, our business could be adversely affected. We may be unable to avoid infringement of third party patents and may have to obtain a license, defend an infringement action, or challenge the validity of the patents in court. A license may be unavailable on terms and conditions acceptable to us, if at all. Patent litigation is costly and time consuming, and we may be unable to prevail in any such patent litigation or devote sufficient resources to even pursue such litigation. If we do not obtain a license under necessary patents, are found liable for infringement, or are not able to have such patents

declared invalid, we may be liable for significant money damages, encounter significant delays in bringing products to market, or be precluded from participating in the manufacture, use or sale of products or methods of treatment requiring such licenses.

We have also applied for a number of trademarks and service marks to further protect the proprietary position of our products. We own 25 registered trademarks and service marks in the United States and 29 registered trademarks and service marks in other countries. We also have 13 pending trademark and service mark applications in the United States and 11 pending trademark and service mark applications in other countries. We also rely on our trade secrets and those of our licensors, as well as other unpatented proprietary information, to protect our products. To the extent that our products have a competitive edge as a result of our reliance on trade secrets and unpatented know-how, our competitive position may be compromised if others independently develop products using the same or similar technologies or trade secrets. We seek to protect our trade secrets and proprietary knowledge in part through confidentiality agreements with our employees, consultants, advisors and collaboration partners. Nevertheless, these agreements may not effectively prevent disclosure of our confidential information and may not provide us with an adequate remedy in the event of unauthorized disclosure of our confidential information. If our employees, consultants, advisors or collaboration partners develop inventions or processes independently or jointly with us that may be applicable to our products under development, disputes may arise about ownership or proprietary rights to those inventions and processes. Such inventions and processes will not necessarily become our property, but may remain the property of those third parties or their employers. Protracted and costly litigation could be necessary to enforce and determine the scope of our proprietary rights. Failure to obtain or maintain patent and trade secret protection, for any reason, could have a material adverse effect on our business.

Competition

The pharmaceutical industry is highly competitive and characterized by a number of established, large pharmaceutical companies, as well as smaller companies. Some of these companies have financial resources, marketing capabilities and experience in obtaining regulatory approvals for product candidates, product line acquisition capabilities and market share substantially greater than ours. Our products and product candidates may also compete with new products currently under development by others, alternate therapies during the period of patent protection, and generic equivalents once patent protection is no longer available. Any products that we develop are likely to be in a highly competitive market and many of our competitors may succeed in developing products that may render our products obsolete or noncompetitive. For a detailed description of current products that compete with Xyrem, please see “—Marketed Products—Xyrem (sodium oxybate oral solution)—Other Treatments.” For detailed descriptions of current products that may be competitive with our product candidates, please see the descriptions under the headings “—Current Treatments” for each our product candidates described under “—Product Candidates.” With respect to our current and potential future product candidates, we believe that our ability to successfully compete will depend on, among other things:

- efficacy, safety and reliability of our product candidates;
- the timing and scope of regulatory approvals;
- product acceptance by physicians and other health care providers;
- our ability to expand and grow our specialty sales force;
- protection of our proprietary rights and the level of generic competition;
- the speed at which we develop product candidates;
- our ability to complete clinical development and obtaining regulatory approvals for our product candidates;
- our ability to supply commercial quantities of a product to the market;
- obtaining reimbursement for product use in approved indications;

- our ability to recruit and retain skilled employees; and
- availability of substantial capital resources to fund development and commercialization activities.

Our ability to remain competitive in the marketplace is also impacted by our ability to compete successfully with other specialty pharmaceutical companies for product and product candidate acquisition and in-licensing opportunities.

Employees

As of January 31, 2007, we had 185 full-time employees. Of the full-time employees, 74 were engaged in sales and marketing, 69 were engaged in product development and clinical activities, and 42 were engaged in general and administrative activities. We plan to continue to expand our product development programs and product commercialization activities. To support this growth, we will need to expand managerial, operations, development, manufacturing, regulatory, sales, marketing, financial and other functions. In particular, our potential future commercial products, including Luvox CR and JZP-6, will require a significantly expanded sales force and a significant sales support organization. None of our employees is represented by a labor union, and we consider our employee relations to be good. We currently utilize TriNet Employer Group, Inc., an employer services company, to provide human resource services. TriNet is the employer of record for payroll, benefits, employee relations and other employment-related administration.

Facilities

Our corporate headquarters are located in Palo Alto, California, where we occupy approximately 44,000 square feet of office space. The annual lease payments for corporate headquarters building are approximately $735,000. Thereafter, at our option, we may extend the term for up to an additional nine years to August 2017. We also lease approximately 13,000 square feet of additional office space in Palo Alto, California. The annual lease payments for this space are approximately $460,000. The fixed lease term expires in August 2008, after which we may extend the term for up to six months subject to certain conditions. We believe that the facilities that we currently lease are sufficient for approximately the next year and that anticipated future growth thereafter can be accommodated by leasing additional space near our current facilities.

Legal Proceedings

In April 2006, a physician who was a speaker for Orphan Medical (and for a short time for us), was indicted by a federal grand jury in U.S. District Court for the Eastern District of New York. The indictment alleges that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. Also in April 2006, the U.S. Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, issued to us and Orphan Medical subpoenas for documents relating to Xyrem. We are cooperating with this investigation and have provided documents to the U.S. Attorney's Office. As a result of our acquisition of Orphan Medical, the U.S. government may seek to hold us responsible for Orphan Medical's conduct. We have been in discussions with the U.S. Attorney's Office regarding the possible settlement of any potential U.S. government claims against Orphan Medical and/or us. We cannot assure you that any such settlement will be reached on reasonable terms, or at all, and if a settlement is reached, we may, among other things, be required to make significant monetary payments and to undertake extensive remedial compliance programs at significant expense to us. Even if we reach a settlement agreement with the U.S. Attorney's Office, we might also be subject to regulatory and/or enforcement action by federal agencies, private insurers and states' attorneys general. If we do not reach a settlement we could be required to spend significant amounts to defend ourselves and Orphan Medical. These matters may involve the filing of criminal charges, as well as criminal and/ or civil fines and penalties, against us, Orphan Medical, or both. We cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse

outcome. However, an adverse outcome could have a material adverse effect on our financial position, liquidity and results of operations.

In April 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against Orphan Medical, John H. Bullion, and Timothy G. McGrath in the U.S. District Court for the District of Minnesota. The case is captioned Little Gem Life Sciences LLC v. Orphan Medical, Inc., John H. Bullion, and Timothy G. McGrath, Civ. Action No. 06-CV-1377 (ADM/AJB). The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by Orphan Medical in connection with the solicitation of proxies to be voted at the special meeting of Orphan Medical stockholders held on June 22, 2005 for the purpose of considering and voting upon a proposal to adopt the definitive merger agreement pursuant to which we acquired Orphan Medical. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the U.S. District Court for the District of Minnesota. On February 16, 2007, the U.S. District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, but granted the plaintiff a one-month leave to amend the plaintiff's complaint. We are unable to predict the outcome of this lawsuit and amounts ultimately payable, if any, resulting from an adverse outcome in this lawsuit cannot be reasonably estimated at this time.

MANAGEMENT

Directors and Executive Officers

The following table sets forth certain information concerning our directors and executive officers as of March 1, 2007:

Name	Age	Position
Bruce C. Cozadd	43	Executive Chairman and Director
Samuel R. Saks, M.D.	52	Chief Executive Officer and Director
Robert M. Myers	43	President
Matthew K. Fust	42	Senior Vice President and Chief Financial Officer
Carol A. Gamble	54	Senior Vice President, General Counsel and Corporate Secretary
Janne L.T. Wissel	51	Senior Vice President of Development
Adam H. Clammer	37	Director
Samuel D. Colella(2)(3)	67	Director
Bryan C. Cressey	57	Director
Michael W. Michelson(2)	55	Director
James C. Momtazee(1)(3)	35	Director
Kenneth W. O'Keefe(1)	40	Director
Alan M. Sebulsky(1)	48	Director
James B. Tananbaum, M.D.(2)	43	Director

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

Executive Officers

Bruce C. Cozadd is a co-founder and has served as our Executive Chairman since 2003. From 2001 to 2003, he served as a consultant to companies in the biopharmaceutical industry and worked on a part-time basis for Prospect Ventures Partners and Versant Ventures, both venture capital firms. From 1991 until 2001, he held various positions with ALZA Corporation, a pharmaceutical company now owned by Johnson & Johnson, most recently as its Executive Vice President and Chief Operating Officer, with responsibility for research and development, manufacturing and sales and marketing. Previously at ALZA Corporation he held the roles of Chief Financial Officer and Vice President, Corporate Planning and Analysis. He serves on the boards of Cerus Corporation, a biopharmaceutical company, Threshold Pharmaceuticals, a biotechnology company, The Nueva School and Stanford Hospital and Clinics, both non-profit organizations, as well as the Stanford Molecular Imaging Advisory Board. He received a B.S. from Yale University and an M.B.A. from the Stanford Graduate School of Business.

Samuel R. Saks, M.D. is a co-founder and has served as our Chief Executive Officer since 2003. From 2001 until 2003, he was Company Group Chairman of ALZA Corporation and served as a member of the Johnson & Johnson Pharmaceutical Group Operating Committee. From 1992 until 2001, he held various positions with ALZA Corporation, most recently as its Chief Medical Officer and Group Vice President, where he was responsible for clinical and commercial activities. He serves on the boards of Trubion Pharmaceuticals, a biopharmaceutical company. He received a B.S. and an M.D. from the University of Illinois.

Robert M. Myers is a co-founder and was appointed as our President in March 2007. From 2003 until 2007, he served as our Executive Vice President and Chief Business Officer. From 2002 until 2003, he served as Executive Vice President, Pharmaceuticals at Exelixis, Inc., a biotechnology company. He previously held various positions with ALZA Corporation from 1992 to 2001, most recently as its Senior Vice President,

Commercial Development. In this role, he was responsible for ALZA Corporation's corporate development, mergers and acquisitions, new product planning and corporate planning. He received B.S. and M.S. degrees from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

Matthew K. Fust was appointed as our Senior Vice President in 2004 and has served as our Chief Financial Officer since 2003. From 2002 to 2003, he served as Chief Financial Officer at Perlegen Sciences, a biopharmaceutical company. He previously held various positions with ALZA Corporation from 1996 to 2002, most recently as its Chief Financial Officer. He serves on the board of Sunesis Pharmaceuticals, a biopharmaceutical company. He received a B.A. from the University of Minnesota and an M.B.A. from the Stanford Graduate School of Business.

Carol A. Gamble was appointed as our Senior Vice President in 2004 and has served as our General Counsel and Corporate Secretary since 2003. From 2002 to 2003, she served as a consultant to various companies in the pharmaceutical industry. From 2000 to 2002, she served as General Counsel and Corporate Secretary of Aerogen, Inc., a biopharmaceutical company acquired by Nektar Therapeutics. From 1988 to 2000, she held various positions with ALZA Corporation, most recently as its Senior Vice President and Chief Corporate Counsel. She received a B.S. from Syracuse University and a J.D. from the University of California, Berkeley, Boalt Hall.

Janne L. T. Wissel has served as our Senior Vice President of Development since 2004. From 2003 to 2004, she served as our Vice President of Development. From 1981 to 2003, she held various positions at ALZA Corporation, most recently as its Senior Vice President, Operations, with responsibility for ALZA Corporation's global regulatory, quality, general operations and manufacturing activities. She has led the development, registration and launch of more than 20 pharmaceutical products in the neurology, pediatric psychiatry, endocrinology, urology and oncology areas. She received a B.S. from the University of California, Davis and an M.B.A. from the University of Phoenix.

Directors

Adam H. Clammer has served as a member of our board of directors since 2004. Since 1995, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Member of its general partner, KKR & Co. L.L.C. He serves on the boards of MedCath Corporation, a cardiovascular services company and several privately-held technology companies. He received a B.S. from the University of California and an M.B.A. from Harvard Business School.

Samuel D. Colella has served as a member of our board of directors since 2004. Since 1999, he has served as Managing Member of Versant Ventures, a venture capital firm, which he co-founded. He serves on the boards of Alexza Pharmaceuticals, Inc., a pharmaceutical company, Genomic Health Inc., a molecular diagnostics company, Symyx Technologies, Inc., a research technology company, Thermage, Inc., a aesthetic medicine company, and several privately-held companies. He received a B.S. from the University of Pittsburgh and an M.B.A. from the Stanford Graduate School of Business.

Bryan C. Cressey has served as a member of our board of directors since 2006. Since 1998, he has been a Partner of Thoma Cressey Bravo, Inc., a private equity firm, of which he is a founder. He serves on the boards of Belden CDT, Inc., a division of Belden Cable, a cable technology company, Select Medical Corporation, a healthcare services company, and several privately-held healthcare services companies. He received a B.A. from the University of Washington, a J.D. from Harvard Law School and an M.B.A. from Harvard Business School.

Michael W. Michelson has served as a member of our board of directors since 2004. Since 1981, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Member of its general partner, KKR & Co. L.L.C. and also serves on KKR's Investment and Operating committees. He serves on the boards of Alliance Imaging, Inc., a diagnostic imaging services company, HCA Inc., a healthcare services company, and Accellant

Inc., a manufacturing and engineering services company. He received an A.B. from Harvard College and a J.D. from Harvard Law School.

James C. Momtazee has served as a member of our board of directors since 2004. Since 1996, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Director. He serves on the boards of Alliance Imaging, Inc., a diagnostic imaging services company, HCA Inc., a healthcare services company, and Accellent Inc., a manufacturing and engineering services company. He received an A.B. from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

Kenneth W. O'Keefe has served as a member of our board of directors since 2004. Since 1997, he has been Managing Director of Beecken Petty O'Keefe & Company, a private equity firm, which he co-founded. He serves on the boards of several privately-held healthcare companies. He received a B.A. from Northwestern University and an M.B.A. from the University of Chicago.

Alan M. Sebulsky has served as a member of our board of directors since 2004. Since 2003, he has served as a Managing Partner of Apothecary Capital LLC, an investment advisory firm. From 2002 to 2003, he was an independent investor. From 1994 to 2002, he held various positions, most recently as a Managing Director, at Lincoln Capital Management, a private investment management firm, where he was responsible for investments in the health care industry. He received a B.B.A. and an M.S. from the University of Wisconsin-Madison.

James B. Tananbaum, M.D. has served as a member of our board of directors since 2003. Since 2000, Dr. Tananbaum has been a Managing Member of Prospect Venture Partners, a venture capital firm he co-founded. He serves on the boards of Critical Therapeutics, Inc., a biopharmaceutical company, Infinity Pharmaceuticals, Inc., a drug discovery company, Novavax, Inc., a biotechnology company, and Vanda Pharmaceuticals Inc., a biopharmaceutical company, as well as several private companies. Dr. Tananbaum was also the founder of GelTex, Inc. and Theravance, Inc. He received a B.S.E.E. from Yale University, and an M.D. and an M.B.A. from Harvard University.

Board Composition

Our board of directors currently consists of ten members. Our board of directors has determined that all of our directors, other than Mr. Cozadd and Dr. Saks, are "independent" within the meaning of applicable NASDAQ listing standards.

Effective upon the completion of this offering, we will divide our board of directors into three classes, as follows:

- Class I, which will consist of , and whose term will expire at our annual meeting of stockholders to be held in 2008;
- Class II, which will consist of , and whose term will expire at our annual meeting of stockholders to be held in 2009; and
- Class III, which will consist of , and whose term will expire at our annual meeting of stockholders to be held in 2010.

At each annual meeting of stockholders to be held after the initial classification, the successors to directors whose terms then expire will serve until their successors are duly elected and qualified at the third annual meeting following their election. The authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of the board of directors may have the effect of delaying or preventing changes in our control or management. Under Delaware law, our directors may be removed for cause by the affirmative vote of the holders of a majority of our voting stock.

Board Committees

Our board of directors currently has an audit committee, a compensation committee and a nominating and corporate governance committee. The composition and primary responsibilities of each committee are described below.

Audit Committee. The members of our audit committee are Messrs. Momtazee, O'Keefe and Sebulsky. Mr. O'Keefe chairs the audit committee. Our board of directors has determined that Messrs. O'Keefe and Sebulsky meet the independence requirements of Rule 10A-3 of the Exchange Act and NASDAQ listing standards. Our board of directors has also determined that Mr. O'Keefe qualifies as an audit committee financial expert within the meaning of SEC regulations and the NASDAQ listing standards. In making this determination, our board of directors considered the nature and scope of experience Mr. O'Keefe has had with reporting companies and his employment in the corporate finance sector.

The primary purpose of the audit committee is to discharge the responsibilities of our board of directors with respect to our accounting, financial and other reporting and internal control practices and to oversee our independent registered public accounting firm. Specific responsibilities of our audit committee include:

- evaluating the performance of our independent registered public accounting firm and determining whether to retain or terminate their services;
- determining and pre-approving the engagement of our independent registered public accounting firm to perform audit services and any permissible non-audit services, other than immaterial aggregate amounts of non-audit services as excepted under applicable laws and rules;
- reviewing and discussing with management and our independent registered public accounting firm the results of the annual audit and the independent registered public accounting firm's review of our annual and quarterly financial statements and reports;
- reviewing with management and our independent registered public accounting firm significant issues that arise regarding accounting principles and financial statement presentation;
- conferring with management and our independent registered public accounting firm regarding the scope, adequacy and effectiveness of our internal control over financial reporting; and
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal control or auditing matters.

Compensation Committee. The members of our compensation committee are Messrs. Colella and Michelson and Dr. Tananbaum. Mr. Michelson chairs the compensation committee. Each member of the compensation committee is independent within the meaning of applicable NASDAQ listing standards, is a "non-employee director" as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and is an "outside director" as that term is defined in Section 162(m) of the Internal Revenue Code of 1986, as amended. The purpose of our compensation committee is to discharge the responsibilities of our board of directors to oversee our compensation policies, plans and programs and to review and determine the compensation to be paid to our executive officers and other senior management. Specific responsibilities of our compensation committee include:

- determining the compensation and other terms of employment of our executive officers and senior management and reviewing and approving corporate performance goals and objectives relevant to such compensation;
- evaluating and recommending to our board of directors the compensation plans and programs advisable for us, and evaluating and recommending the modification or termination of existing plans and programs; and
- reviewing and approving the terms of any employment agreements, severance arrangements, change of control protections and any other compensatory arrangements for our executive officers and other senior management.

Nominating and Corporate Governance Committee. The members of our nominating and corporate governance committee are Messrs. Colella and Momtazee. Mr. Colella chairs the nominating and corporate governance committee. Each member of the nominating and corporate governance committee is independent within the meaning of applicable NASDAQ listing standards. The specific responsibilities of our nominating and corporate governance committee include:

- identifying, reviewing, evaluating and recommending for selection candidates for membership to our board of directors;
- reviewing, evaluating and considering the recommendation for nomination of incumbent members of our board of directors for reelection to our board of directors and monitoring the size of our board of directors;
- evaluating nominations by stockholders of candidates for election to our board of directors;
- reviewing, discussing and reporting to our board of directors an assessment of our board's performance;
- recommending director compensation; and
- determining adherence to our corporate governance documents.

Compensation Committee Interlocks and Insider Participation

In 2006, our compensation committee consisted of Messrs. Colella and Michelson and Dr. Tananbaum. David Mayer, one of our former directors, served on the compensation committee until his resignation from our board of directors in October 2006. None of the members of the compensation committee is currently or has been at any time one of our officers or employees. None of our officers currently serves, or has served during the last completed fiscal year, as a member of the board of directors or compensation committee of any entity that has one or more officers serving as a member of our board of directors or compensation committee.

Executive Compensation

Compensation Discussion and Analysis

Overview

Our executive compensation program is designed to help us attract, as needed, talented individuals to manage and operate all aspects of our business, to reward those individuals fairly over time, and to retain those individuals who continue to meet our high expectations. The goals of our executive compensation program are to align our executive officers' compensation with our business objectives and the interests of our stockholders, to incentivize and reward our executive officers for our success, and to reflect the teamwork philosophy of our executive management team. Specifically, we have created an executive compensation program that combines short and long-term components, cash and equity, and fixed and contingent payments, in the proportions that we believe are the most appropriate to incentivize and reward our executive officers for achieving our objectives. Our executive compensation program is also intended to make us competitive in the San Francisco Bay Area, and in the pharmaceutical and biotechnology industry, where there is significant competition for talented employees, and to be fair relative to other professionals within our organization. We believe that we must provide competitive compensation packages to attract and retain executive officers and to help our executive management function as a stable team over the longer term.

As discussed in further detail below, our executive compensation program consists of the following three principal components:

- *Base Salary*. Base salary for our executive officers is set each year, effective March 1. For 2006, our executive officers' base salaries were set by reviewing their then current salaries in light of 2005

company performance and individual performance, base salary benchmarking against comparable companies, and general economic factors. We also considered, as we have since our inception, compensation equity among our executive officers.

- *Bonus*. We have an annual cash bonus plan for our employees under which bonuses may be paid shortly after the end of each year, at the discretion of our board of directors, based on our performance in meeting our corporate objectives for the year and each individual's performance and contribution in meeting our corporate objectives.
- *Stock Option Grants*. Our employees and executive officers receive stock option grants as long-term incentives to ensure that a portion of compensation is linked to our long-term success.

The compensation committee does not have any formal policies for allocating compensation among salary, bonus and stock option grants. However, the compensation of our executive officers is based in part on the terms of employment agreements we entered into with each of our executive officers in February 2004 which set forth the initial base salaries for our executive officers as well as the target bonuses under our annual cash bonus plan (subject, in each case, to increases approved by our board of directors or compensation committee).

Role of the Compensation Committee in Setting Executive Compensation

The compensation committee determines the salary, annual cash bonus awards and stock option grants for our executive officers. The compensation committee considers recommendations from Samuel Saks, our Chief Executive Officer, and Bruce Cozadd, our Executive Chairman, in determining executive compensation. While Dr. Saks and Mr. Cozadd discuss their recommendations with the compensation committee, they do not participate in determining their own compensation or that of one another. In making their recommendations, Dr. Saks and Mr. Cozadd receive input from our Human Resources department and have access to various third party compensation surveys and compensation data of publicly-traded we obtained from SEC filings. This information is also available to our compensation committee. Carol Gamble, our General Counsel, participates in compensation committee meetings, but does not participate in any discussions of her own compensation. None of our other executive officers participates in the compensation committee's executive compensation discussions. The compensation committee does not delegate any of its functions to others in determining executive compensation.

The compensation committee has not historically engaged consultants with respect to executive compensation matters. However, the compensation committee engaged Compensia, Inc., a compensation consulting firm located in San Jose, California, to provide the compensation committee with certain benchmarking material to assist it in determining appropriate salary, bonus and long-term equity compensation for our executive officers for 2007. Compensia provided the compensation committee with compensation data for 17 publicly-traded companies in the pharmaceuticals and biotechnology industry, some smaller than our company, some of similar size, and some larger, including Alexza Pharmaceuticals, Inc., Alkermes, Inc., CV Therapeutics, Inc., Endo Pharmaceuticals Holdings, Inc., Indevus Pharmaceuticals, Inc., InterMune, Inc., Medicis Pharmaceutical Corporation and Theravance, Inc. The companies in the survey were chosen because they were generally similar to ours in terms of industry, capital structure, financial attributes, geographic location and/or competition for talent. However, because certain aspects of our business and management team are unique, the compensation committee used the peer company data as one resource in determining executive compensation for 2007 and not as a stand-alone tool. The compensation committee reviewed the data from Compensia and discussed it, along with other publicly-available compensation data, with Compensia, Dr. Saks and Mr. Cozadd in determining compensation for our executive officers for 2007.

Executive Compensation Program

Our executive compensation program consists of three principal components: base salary, annual cash bonuses (if approved by our board of directors) and long-term incentive compensation in the form of stock

options. Our executive officers are also eligible to participate, on the same basis as other employees, in our 401(k) plan and our other benefit programs generally available to all employees. Our executive officers do not receive any perquisites.

Base Salary. Each of our executive officers entered into an employment agreement with us in February 2004 that provides for an initial base salary, subject to annual increases determined by the compensation committee. We review company and individual performance annually, shortly after the end of each calendar year. As discussed above, Dr. Saks and Mr. Cozadd review the executive officers' salaries with the compensation committee in connection with that annual performance review. For 2006, our executive officers' base salaries were set by reviewing their then current salaries against company and individual performance, base salary benchmarking against comparable companies, as well as general economic factors. We also considered, as we have since our inception, compensation equity among our executive officers. Since our inception, we have reviewed the compensation of our executive officers as a group, and have minimized the differences among their salaries. One of the core values of our company is fostering the teamwork philosophy of our management team, which is reflected in our policy of providing compensation equity among our executive officers.

Our compensation committee targets our executives' base salaries as a group in the 75th percentile of salaries for executive officers in similar positions with similar responsibilities at companies of similar size in our industry that have both commercial products and significant product development activities. Our compensation committee believes this is appropriate for several reasons. We have a complex business model and are pursuing multiple commercial and product development opportunities simultaneously with a relatively small organization relative to our level of investment in research and development. We do not have laboratories or manufacturing facilities, and therefore we conduct our development, manufacturing and clinical activities through arrangements with third parties. As a result, our executives are required to manage both internal and significant external resources. Competition for executive talent is intense in our industry and in our geographic area. Our executives have many years of valuable experience in our industry, and their continued leadership is critical to our short-term and long-term success.

Cash Bonuses. We have an annual cash bonus plan under which cash bonuses may be paid annually to all of our employees, including our executive officers, shortly after the end of the calendar year. Target bonus levels under the plan are assigned based on various categories of employees and with respect to our executive officers, are based on the terms of the employment agreements we entered into with them. For 2006, the target bonus level for our Executive Chairman, Chief Executive Officer and Executive Vice President was 50% of base salary; for Senior Vice Presidents, the target was 40% of salary; for Vice Presidents, 20-35% of salary; and lower percentage ranges for directors, managers and others. The actual bonus awarded in any year, if any, may be more or less than the target, depending on individual performance and the achievement of our corporate objectives. Whether or not a bonus is paid for any year is within the discretion of our board of directors. Our compensation committee also determines the size of the total bonus pool under the plan, which is based in large part on our board of directors' determination of our success in achieving our corporate objectives for the plan year. The compensation committee determines the portion of the pool, if any, that will be allocated to the executive officers as a group and the bonuses for each of our executive officers and vice presidents. Dr. Saks and Mr. Cozadd provide input to the compensation committee with respect to bonuses for executive officers.

For 2006, our corporate objectives fell generally in the following categories: achieving certain sales targets, reaching certain development milestones, achieving certain financial targets (for example, spending and EBITDA), completing important milestones in employee training and development and achieving and sustaining company-wide ethical and compliant behavior. The bonus plan does not give a particular weight to any particular corporate objective, nor does it set any formula for determining bonuses. Each employee, including each executive officer, has individual objectives for the year which are designed to contribute to the achievement of our corporate objectives.

The compensation committee has not determined whether it would attempt to recover bonuses from our executive officers if the performance objectives that led to the bonus determination were to be restated, or found

not to have been met to the extent originally believed by the compensation committee. However, as a public company, if we are required to restate our financial results due to our material noncompliance with any financial reporting requirements under the federal securities laws, as a result of misconduct, our Chief Executive Officer and Chief Financial Officer may be legally required to reimburse us for any bonus or other incentive-based or equity-based compensation they receive in accordance with the provisions of Section 304 of the Sarbanes-Oxley Act of 2002.

We have not paid any significant signing or promotion bonuses to our executive officers, nor have we guaranteed any bonuses to our executive officers.

Long-term Equity Compensation. Our salary and bonus programs are intended to compensate our executive officers for short-term performance. We also have an equity incentive program intended to reward longer-term performance and to help align the interests of our executive officers with those of our stockholders. We believe that long-term performance is achieved through an ownership culture that rewards such performance by our executive officers through the use of equity incentives. Our current long-term incentives consist solely of stock option grants under our 2003 Equity Incentive Plan. However, our executive officers have also acquired equity in our company through direct investment in our common stock and in our prior preferred stock offerings. The common stock acquired directly by our executive officers is subject to our right of repurchase which lapses on a vesting schedule over a period of four years as described under "—Executive Employment Agreements—Unvested Share Repurchase Right" below. Vested shares are also subject to our repurchase right until February 2009 upon specified termination events as described under "—Executive Employment Agreements—Vested Share Repurchase Right; Executive Put Right" below. The compensation committee believes that the use of stock options offers the best approach to achieve our compensation goals with respect to long-term compensation and currently provides tax and other advantages to our employees relative to other forms of equity compensation. We believe that our stock option program is an important retention tool for our employees. With respect to determining the size of stock option grants, the compensation committee has approved target ranges of stock options for new vice presidents, directors, managers and others, and it reviews those ranges at least annually. The target ranges are intended to set appropriate stock option incentive levels for the various levels of responsibility.

Our executive officers were granted stock option options under our 2003 Equity Incentive Plan in February 2004, which will be fully vested in February 2008 (but any vested shares acquired upon exercise of the options are subject to our repurchase right until February 2009). In connection with its compensation review for 2007, the compensation committee granted additional stock options to our executive officers in February 2007 as described in more detail under "—Compensation Actions for our Executive Officers" below. These options vest as to one-third of the shares subject to the option in February 2010, and the remaining two-thirds of the shares subject to the option vest monthly over two years thereafter. The exercise price of the options is equal to the fair market value of our common stock as determined by the compensation committee on the date of grant. In the absence of a public trading market for our common stock, the compensation committee determined the fair market value of our common stock in good faith based upon consideration of a number of relevant factors including the status of our development and commercialization efforts, results of operations, market conditions and the valuation we received from an independent valuation firm with respect to the fair market value of our common stock as of December 31, 2006. In determining the number of stock options granted to the executive officers, the compensation committee took into account each executive officer's position, scope of responsibility, ability to affect stockholder value, the individual's historic and recent performance, and our policy of providing compensation equity among our executive officers.

In connection with this offering, our board of directors has adopted new equity benefit plans described under "—Employee Benefit Plans" below. The 2007 Equity Incentive Plan will replace our existing 2003 Equity Incentive Plan immediately upon the signing of the underwriting agreement for this offering. In connection with our transition to a publicly-traded company, the compensation committee intends to evaluate an annual stock option grant program for executive officers to continue aligning the interests of our executive officers with those

of our stockholders. Participation in our 2007 Employee Stock Purchase Plan that we have adopted and that will become effective immediately upon the signing of the underwriting agreement for this offering will also be available to all executive officers following this offering on the same basis as our other employees.

Employment Agreements. Our executive officers, each of whom is a party to an employment agreement with us, will continue, following this offering, to be parties to these agreements in their current form until such time as our compensation committee agrees with the executive officers to revise the employment agreements, or until they expire in February 2009. The material terms of these employment agreements are described under "—Executive Employment Agreements" below.

Severance and Change of Control Benefits. Under their employment agreements, our executive officers are entitled to certain severance and change of control benefits, the terms of which are described in detail below under "Executive Employment Agreements—Severance and Change of Control Benefits." With respect to change of control benefits, we provide severance compensation if an executive officer is terminated in connection with a change of control transaction to further promote the ability of our executive officers to act in the best interests of our stockholders even though they could be terminated as a result of the transaction. We also believe that the other severance benefits are appropriate, particularly with respect to a termination by us without cause since in that scenario, we and the executive have a mutually-agreed-upon severance package that is in place prior to any termination event which provides us with more flexibility to make a change in executive management if such a change is in our stockholders' best interests.

Other Benefits. We have a 401(k) plan in which substantially all of our employees are entitled to participate. Employees contribute their own funds, as salary deductions, on a pre-tax basis. Contributions may be made up to plan limits, subject to government limitations. The plan permits us to make matching contributions if we choose; however, to date, we have not made any matching contributions. We provide health care, dental and vision benefits to all full-time employees, including our executive officers. We also have a flexible benefits healthcare plan and a flexible benefits childcare plan under which employees can set aside pre-tax funds to pay for qualified health care expenses and qualified childcare expenses not reimbursed by insurance. These benefits are available to all employees, subject to applicable laws.

Compensation Actions for Our Executive Officers

Samuel Saks, M.D.—Chief Executive Officer. Dr. Saks' base salary effective as March 1, 2006 was $410,000, or a 5% increase over his base salary for the prior 12-month period. After review of the data from Compensia and other publicly-available compensation data, including chief executive officer salaries of public companies in our industry and other companies in the San Francisco Bay Area, the compensation committee increased Dr. Saks' salary to $450,000 effective March 1, 2007. Dr. Saks received a bonus of $102,000 for 2006. In setting the bonus pool for 2006, our board of directors determined that we had met many of our important objectives, but not all of our 2006 objectives, and approved a bonus payout of 56% of the total target bonus pool. The compensation committee determined Dr. Saks' bonus to be approximately 50% of target based on his performance and contributions to meeting our objectives for 2006, as well as his leadership during key challenges, and, at his and Mr. Cozadd's suggestion, the allocation of a portion of the available bonus pool to executives other than Dr. Saks and Mr. Cozadd that could have otherwise been awarded to Dr. Saks and Cozadd. In February 2007, the compensation committee granted Dr. Saks an option to purchase 450,000 shares of common stock with the vesting schedule described above. The option has an exercise price of $1.75 per share, the fair market value of our common stock determined by the compensation committee on the date of grant. As with all of our executive officers, this option was granted in part due to the fact that Dr. Saks had not received any stock option grants since February 2004, and Dr. Saks' option granted in 2004 will be fully vested in February 2008 (but any vested shares acquired upon exercise of the options are subject to our repurchase right until February 2009). The new stock option is intended to provide a strong retention incentive well into the future, and to help align Dr. Saks' long-term interests with those of our stockholders.

Bruce Cozadd—Executive Chairman. Mr. Cozadd's base salary effective March 1, 2006 was $310,000, or a 6% increase over his base salary for the prior 12-month period. Mr. Cozadd currently devotes 75% of his professional time to his role as our Executive Chairman. Since our inception in 2003, Mr. Cozadd and Dr. Saks have had approximately the same salary on a full-time equivalent basis. Mr. Cozadd's salary effective as of March 1, 2007 is $338,000 for 75% time. Mr. Cozadd's base salary was determined by the compensation committee as part of its compensation review described above, with reference to Dr. Saks' base salary. Mr. Cozadd's bonus for 2006 was $77,000, or approximately 50% of his target bonus. The bonus for Mr. Cozadd was determined by the compensation committee based on his performance, contributions and leadership in 2006 and, at his and Dr. Saks' suggestion, the allocation of a portion of the available bonus pool to executives other than Dr. Saks and Mr. Cozadd that could have otherwise been awarded to Dr. Saks and Cozadd. In February 2007, the compensation committee granted Mr. Cozadd an option to purchase 450,000 shares of common stock with the vesting schedule described above. The option has an exercise price of $1.75 per share, the fair market value of our common stock determined by the compensation committee on the date of grant.

Robert Myers—President. Mr. Myers' base salary effective March 1, 2006 was $410,000, or a 5% increase over his salary for the prior 12-month period. Mr. Myers received a 4% salary increase effective March 1, 2007. Mr. Myers' bonus for 2006 was $120,000, or approximately 60% of his target bonus. The bonus for Mr. Myers was determined by the compensation committee based on Mr. Myers' leadership of our commercial team through a number of key transactions during the year, the expansion of our sales and marketing activities and the significant achievements of our commercial organization during 2006. In February 2007, partly in recognition of his promotion from Executive Vice President and Chief Business Officer to President, the compensation committee granted Mr. Myers an option to purchase 350,000 shares of common stock with vesting schedule described above. The option has an exercise price of $1.75 per share, the fair market value of our common stock determined by the compensation committee on the date of grant.

Senior Vice Presidents. The base salary effective March 1, 2006 for each of our remaining executive officers was $330,000, or a 5.6% increase over their salaries for the prior 12-month period. They received a 4% salary increase effective March 1, 2007. The 2006 bonuses for these executive officers, as determined by the compensation committee and based on the recommendations of Dr. Saks and Mr. Cozadd, were $70,000 for Mr. Fust, $80,000 for Ms. Gamble and $66,000 for Ms. Wissel. With these bonuses, the Compensation Committee recognized the efforts of each of these executive officers in connection with our key corporate objectives for 2006. In February 2007, the compensation committee granted each of these executive officers an option to purchase 250,000 shares of common stock with the vesting schedule described above. The options have an exercise price of $1.75 per share, the fair market value of our common stock determined by the compensation committee on the date of grant.

Accounting and Tax Considerations

Effective January 1, 2006, we adopted the fair value provisions of Financial Accounting Standards Board Statement No. 123(R) (revised 2004), "Share-Based Payment," or SFAS 123R. Under SFAS 123R, we are required to estimate and record an expense for each award of equity compensation (including stock options) over the vesting period of the award. The compensation committee has determined to retain for the foreseeable future our stock option program as the sole component of its long-term compensation program, and, therefore, to record this expense on an ongoing basis according to SFAS 123R. The compensation committee has considered, and may in the future consider, the grant of restricted stock to our executive officers in lieu of stock option grants in light of the accounting impact of SFAS 123R with respect to stock option grants and other considerations.

Section 162(m) of the Internal Revenue Code of 1986 limits our deduction for federal income tax purposes to not more than $1 million of compensation paid to certain executive officers in a calendar year. Compensation above $1 million may be deducted if it is "performance-based compensation." The compensation committee has not yet established a policy for determining which forms of incentive compensation awarded to our executive

officers shall be designed to qualify as "performance-based compensation." To maintain flexibility in compensating our executive officers in a manner designed to promote our objectives, the compensation committee has not adopted a policy that requires all compensation to be deductible. However, the compensation committee intends to evaluate the effects of the compensation limits of Section 162(m) on any compensation it proposes to grant, and the compensation committee intends to provide future compensation in a manner consistent with our best interests and those of our stockholders.

Summary Compensation Table

The following table sets forth all of the compensation awarded to, earned by, or paid to our principal executive officer, principal financial officer and our four other highest paid executive officers for the year ended December 31, 2006. The officers listed in the table below are referred to in this prospectus as the "named executive officers."

2006 Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Option Awards ($)(1)	Non-Equity Incentive Plan Compensation ($)(2)	All Other Compensation ($)(3)	Total ($)
Bruce C. Cozadd(4) Executive Chairman	2006	307,236	605,818	77,000	234	990,288
Samuel R. Saks, M.D. Chief Executive Officer	2006	406,853	605,818	102,000	234	1,114,905
Robert M. Myers President	2006	406,853	605,818	120,000	234	1,132,905
Matthew K. Fust Senior Vice President and Chief Financial Officer	2006	327,159	231,268	70,000	234	628,661
Carol A. Gamble Senior Vice President, General Counsel and Corporate Secretary	2006	327,159	231,268	80,000	234	638,661
Janne L.T. Wissel Senior Vice President of Development	2006	327,159	231,268	66,000	234	624,661

(1) We did not grant any stock option awards to our named executive officers in 2006. The dollar amounts in this column represent the compensation cost for the year ended December 31, 2006 of stock option awards granted in prior years. These amounts have been calculated in accordance with FASB Statement No. 123 (revised), "Share-Based Payment," or SFAS No. 123R, using the Black-Scholes option-pricing model. Pursuant to SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions. For a discussion of valuation assumptions, see Note 14 to our consolidated financial statements included elsewhere in this prospectus.
(2) See footnote (1) to the 2006 Grants of Plan-Based Awards Table below.
(3) Represents group term life insurance premiums paid by us.
(4) Mr. Cozadd currently devotes 75% of his professional time to his role as our Executive Chairman.

Grants of Plan-Based Awards in Fiscal 2006

The following table sets forth certain information regarding grants of plan-based awards to the named executive officers during the year ended December 31, 2006.

2006 Grants of Plan-Based Awards Table

Name	Estimated Possible Payouts Under Non-Equity Incentive Plan Awards Target ($)(1)
Bruce C. Cozadd	153,618
Samuel R. Saks, M.D.	203,427
Robert M. Myers	203,427
Matthew K. Fust	130,864
Carol A. Gamble	130,864
Janne L.T. Wissel	130,864

(1) This column sets forth the target bonus amount for each named executive officer for the year ended December 31, 2006 under our annual cash bonus plan established by our board of directors, which for Dr. Saks and Messrs. Cozadd and Myers was 50% of their respective salaries earned for fiscal year ended December 31, 2006. The target bonus amount for Mr. Fust, Ms. Gamble and Ms. Wissel was 40% of their respective salaries earned for fiscal year ended December 31, 2006. The actual cash bonus award earned for the year ended December 31, 2006 for each named executive officer is set forth in the 2006 Summary Compensation Table above. As such, the amounts set forth in this column do not represent additional compensation earned by the named executive officers for the year ended December 31, 2006. For a description of our annual cash bonus plan, please see "—Compensation Discussion and Analysis—Executive Compensation Program—Cash Bonuses" above.

Executive Employment Agreements

General

In February 2004, we entered into employment agreements with each of our named executive officers. Each of the employment agreements provides for an initial annual base salary subject to annual increases approved by our board of directors. The employment agreements set forth an initial base salary of $375,000 for Mr. Cozadd, $375,000 for Dr. Saks, $375,000 for Mr. Myers and $300,000 for each of Mr. Fust, Ms. Gamble and Ms. Wissel. Mr. Cozadd's annual base salary is pro-rated based on full-time employment. Mr. Cozadd currently devotes 75% of his professional time to his role as our Executive Chairman. Dr. Saks and Messrs. Cozadd and Myers are each eligible to receive an annual performance bonus determined in accordance with our annual cash bonus plan and targeted at 50% of their respective annual base salaries, subject to increases approved by our board of directors. Mr. Fust, Ms. Gamble and Ms. Wissel are each eligible to receive an annual performance bonus determined in accordance with our annual cash bonus plan and targeted at 40% of their respective annual base salaries, subject to increases approved by our board of directors. Each of the named executive officers is also eligible to participate in our general employee benefits plans for executives or key management employees in accordance with the terms and conditions of these plans.

Term

Each employment agreement provides that the terms and conditions of the agreement will apply to the named executive officers' employment until the fifth anniversary of the date of the agreement. However, each employment agreement also provides that the employment of the named executive officer may be terminated at any time by us or by the named executive officer, subject to the named executive officer's right to receive certain severance and other benefits, and our right to repurchase shares of our common stock held by the named executive officer.

Unvested Share Repurchase Right

In the event a named executive officer's employment is terminated by us or the named executive officer, we have the right to repurchase at cost all or any portion of the shares of common stock that were held by the named executive officer on the date of the employment agreement, which we refer to in this prospectus as the "founder shares." Our right of repurchase with respect to the founder shares lapses on an equal monthly basis over a period of four years, subject to acceleration in certain termination scenarios as described under "—Severance and Change of Control Benefits" and subject to our right to repurchase vested shares as described under "—Vested Share Repurchase Right; Executive Put Right."

Vested Share Repurchase Right; Executive Put Right

In the event a named executive officer is terminated by us for "cause" or is terminated by the named executive officer without "good reason," as those terms are defined in the employment agreements, we have the right to repurchase any vested shares of common stock held by the named executive officer at the lesser of cost or fair market value. If the named executive officer's employment is terminated without cause or for good reason, we have the right to repurchase the named executive officer's vested shares at fair market value. Finally, if the named executive officer's employment is terminated because of death or disability, we have the right to repurchase, and the named executive officer (or his or her estate) has the right to require us to repurchase, the named executive officer's vested shares at fair market value. Our right to repurchase these vested shares terminates in February 2009, or earlier upon the completion of a change of control event; however, our vested share repurchase rights terminate on the date one year after our initial public offering as to 20% of the vested shares then held by each named executive officer.

Severance and Change of Control Benefits

Cash Severance Payments. In the event a named executive officer is terminated by us without cause or is terminated by the named executive officer for good reason, the named executive officer is entitled, subject to our receipt of an effective waiver and release of claims executed by the named executive officer, to the following cash severance payments:

- an amount, payable in accordance with our customary payroll practices, equal to $1/12^{th}$ of the named executive officer's base salary at the time of termination for each month in a severance period of up to 24 months;
- COBRA premiums for the number of months in a severance period of up to 24 months, payable on a monthly basis;
- an amount, payable when bonus payments for the year of termination are paid to other employees, equal to the sum of:
  - the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days remaining in the year of termination after the date of termination) multiplied by the lesser of (a) the named executive officer's historical bonus rate (based on the average ratio of bonus paid to salary paid) or (b) the named executive officer's target bonus rate for the year of termination (which may be reduced based on the ratio of bonuses paid to target bonuses for the remaining named executive officers in the year of termination), which lesser amount we refer to in this prospectus as the "severance bonus rate", plus
  - the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days elapsed in the year of termination including the date of termination) multiplied by one-half of the severance bonus rate; and
- an amount, payable when bonus payments for the year following the year of termination are paid to other employees, equal to the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days elapsed in the year of termination including the date

of termination) multiplied by the lesser of (a) the named executive officer's historical bonus rate or (b) the named executive officer's target bonus rate for the year of following termination (which may be reduced based on the ratio of bonuses paid to target bonuses for the remaining named executive officers in the year following termination).

The employment agreements also provide for the payment of the cash severance payments described above if a named executive officer voluntarily terminates his or her employment within one year after the effective date of (a) a change of control event or (b) in the case of the named executive officers other than Dr. Saks, a significant transaction, such as our acquisition of another entity, where the members of our board of directors prior to the significant transaction constitute a majority of the board of directors after the transaction and the employment of 50% or more of the existing members of our executive management team, including our Chief Executive Officer, is terminated in connection with the significant transaction.

The following table estimates the amount of compensation payable to each named executive officer in the event of a termination described above, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual amounts that would be paid out in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

Name	Salary Continuation ($)	COBRA Premiums ($)	Bonus Payment for the Year of Termination ($)	Bonus Payment for the Year Following Termination ($)(1)
Bruce C. Cozadd	465,000	21,320	24,823	49,104
Samuel R. Saks, M.D.	615,000	33,049	30,735	60,801
Robert M. Myers	615,000	25,485	44,323	87,679
Matthew K. Fust	495,000	6,043	29,676	58,706
Carol A. Gamble	495,000	21,228	22,926	45,352
Janne L.T. Wissel	467,500	12,493	22,926	45,352

(1) For purposes of calculating the amounts set forth in this column, applicable bonus rates in the year of termination and the year following termination are assumed to be the same.

The employment agreements further provide that if a named executive officer's employment is terminated (a) by the named executive officer due to a relocation of our executive office of more than 20 miles from our current executive office, (b) without cause by us or for good reason by the named executive officer in connection with a change of control or a significant transaction, or (c) in the case of the named executive officers other than Dr. Saks, without cause by us or for good reason by the named executive officer prior to the first anniversary of the effective date of a significant transaction in connection with which the employment of 50% or more of the existing members of our executive management team, including our Chief Executive Officer, is terminated, then, and in each such case, the named executive officer is entitled, subject to our receipt of an effective waiver and release of claims executed by the named executive officer, to the following cash severance payments:

- a single lump sum payment equal to $1/12^{th}$ of the named executive officer's base salary at the time of termination for each month in a severance period of up to 24 months;
- a single lump sum payment equal to the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days elapsed in the year of termination including the date of termination) multiplied by the named executive officer's historical bonus rate;
- a single lump sum payment equal to the product of (a) $1/12^{th}$ of the named executive officer's base salary at the time of termination multiplied by (b) the named executive officer's historical bonus rate multiplied by (c) the number of months in a severance period of up to 24 months; and
- COBRA premiums for the number of months in a severance period of up to 24 months, payable on a monthly basis.

The following table estimates the amount of compensation payable to each named executive officer in the event of a termination described above, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual amounts that would be paid out in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

Name	Lump Sum Salary Payment ($)	COBRA Premiums ($)	Lump Sum Bonus Payment ($)
Bruce C. Cozadd	465,000	21,320	123,167
Samuel R. Saks, M.D.	615,000	33,049	152,505
Robert M. Myers	615,000	25,485	219,922
Matthew K. Fust	495,000	6,043	147,249
Carol A. Gamble	495,000	21,228	113,754
Janne L.T. Wissel	467,500	12,493	109,954

In the event a named executive officer's employment is terminated by reason of death or disability, the named executive officer will be entitled to a cash payment equal to the named executive officer's accrued bonus (if any) at the rate in effect at the time of termination. As described above, each of named executive officer (or his or her estate) would also be entitled to require us to repurchase the named executive officer's vested shares at fair market value. The following table estimates the amount of compensation payable to each named executive officer in the event of a termination by reason of death or disability, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual amounts that would be paid out in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

Name	Accrued Bonus ($)	Executive Put Right ($)(1)
Bruce C. Cozadd	76,578	
Samuel R. Saks, M.D.	101,441	
Robert M. Myers	119,342	
Matthew K. Fust	69,616	
Carol A. Gamble	79,562	
Janne L.T. Wissel	65,638	

(1) The value of the put right is calculated assuming a price per share of $, which is the mid-point of the range reflected on the cover page of this prospectus, with respect to vested shares of common stock.

Vesting Acceleration. The employment agreements provide that if the named executive officer's employment is terminated (a) without cause by us or for good reason by the named executive officer in connection with change of control or significant transaction, or within 12 months following a change of control, or (b) in the case of the named executive officers other than Dr. Saks, without cause by us or for good reason by the named executive officer prior to the first anniversary of the effective date of a significant transaction in connection with which the employment of 50% or more of the existing members of our executive management team, including our Chief Executive Officer, is terminated, then all unvested founder shares will immediately vest and our unvested share repurchase right will immediately lapse with respect to those shares. These provisions also govern the terms of the stock options granted to our named executive officers under our 2003 Equity Incentive Plan such that in the event of one of these termination scenarios, the options granted to our named executive officers under our 2003 Equity Incentive Plan would immediately vest and become exercisable and would no longer be subject to our unvested share repurchase right.

In addition, the employment agreements provide that if the named executive officer's employment is terminated without cause by us or for good reason by the named executive officer prior to and not in connection

with or more than 12 months following, a change in control, then 1/4th of the founder shares (or the actual number of unvested founder shares immediately prior to the termination, if less) will immediately vest and our unvested share repurchase right will immediately lapse with respect to those shares. These provisions are not applicable to the stock options granted to our named executive officers under our 2003 Equity Incentive Plan.

The following table estimates the value of the vesting acceleration provisions described above with respect to each named executive officer in the event of a termination described above, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual value of vesting acceleration in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

	Full Vesting Acceleration		Partial Vesting Acceleration	
Name	Founder Share Acceleration ($)(1)	Option Acceleration ($)(2)	Founder Share Acceleration ($)(1)	Option Acceleration ($)
Bruce C. Cozadd				—
Samuel R. Saks, M.D.				—
Robert M. Myers				—
Matthew K. Fust				—
Carol A. Gamble				—
Janne L.T. Wissel				—

(1) The value of vesting acceleration is calculated assuming a price per share of $, which is the mid-point of the range reflected on the cover page of this prospectus, with respect to unvested founder shares subject to acceleration.

(2) The value of vesting acceleration is calculated assuming a price per share of $, which is the mid-point of the range reflected on the cover page of this prospectus, with respect to unvested option shares subject to acceleration minus the exercise price of these unvested option shares.

Employee Benefit Plans

2003 Equity Incentive Plan

Our board of directors adopted, and our stockholders approved, the 2003 Equity Incentive Plan, or 2003 plan, in March 2003. An aggregate of 23,517,858 shares of our common stock is reserved for issuance under the 2003 plan. The 2003 plan provides for the grant of incentive stock options, nonstatutory stock options, stock appreciation rights, stock issuances and cash awards. As of December 31, 2006, options to purchase 17,677,564 shares of our common stock at a weighted average exercise price per share of $1.96 remained outstanding under the 2003 plan. No stock appreciation rights, stock issuances, or cash awards have been granted under the 2003 plan. As of December 31, 2006, 5,378,732 shares of our common stock remained available for future issuance under the 2003 plan.

Our board of directors has the authority to administer the 2003 plan and the awards granted under it. Upon the signing of the underwriting agreement for this offering, the 2003 plan will terminate so that no further awards may be granted under the 2003 plan. Although the 2003 plan will terminate, all outstanding awards will continue to be governed by their existing terms.

Stock Options. The 2003 plan provides for the grant of incentive stock options under the federal tax laws or nonstatutory stock options. Incentive stock options may be granted only to employees. Nonstatutory stock options may be granted to employees, non-employee directors and consultants. The exercise price of incentive stock options may not be less than 100% of the fair market value of our common stock on the date of grant. The exercise price of nonstatutory stock options may not be less than 85% of the fair market value of our common stock on the date of grant. Shares subject to options under the 2003 plan generally vest in a series of installments over an optionee's period of service, with a minimum vesting rate as to non-executive employees of at least 20% per year over five years from the date of grant.

In general, the maximum term of options granted under the 2003 plan is ten years. Unless the terms of an optionee's stock option agreement provide otherwise, if an optionee's service relationship with us, or any of our affiliates, ceases for any reason other than for cause, disability or death, the optionee may exercise the vested portion of any option for three months after the date of such termination. If an optionee's service relationship with us, or any of our affiliates, terminates by reason of disability or death, the optionee or a personal representative may exercise the vested portion of any option for 12 months after the date of such termination. In no event, however, may an option be exercised beyond the expiration of its term.

Corporate Transactions. In the event of certain significant corporate transactions, our board of directors has the discretion to take one or more of the following actions: (a) arrange for the assumption or substitution of outstanding awards, (b) accelerate the vesting and termination of outstanding awards in whole or in part, (c) cancel or arrange for the cancellation of awards in exchange for cash payments and (d) arrange for any repurchase rights applicable to award shares to apply to any substituted securities issued in the transaction. Our board of directors need not adopt the same rules for each participant.

Changes in Control. In general, the vesting and exercisability of options granted to non-executive employees under the 2003 plan will accelerate with respect to an additional 25% of the option shares if (a) a change in control occurs and (b) the individual's employment is terminated by us without cause within 12 months thereafter. In general, under our employment agreements with our executive officers, the vesting and exercisability of options granted to executive officers under the 2003 plan will accelerate in full (a) if a change in control or significant transaction occurs and the officer's employment is terminated by us without cause or the officer resigns for good reason in connection therewith or within 12 months thereafter or (b) if the employment of the officer (other than Dr. Saks) is terminated by us without cause or the officer (other than Dr. Saks) resigns for good reason within one year of a significant transaction where the employment of 50% or more of the members of our executive management team, including the employment of Dr. Saks, are terminated in connection with such significant transaction. See "—Executive Employment Agreements—Severance and Change of Control Benefits."

2007 Equity Incentive Plan

Our board of directors adopted the 2007 Equity Incentive Plan, or 2007 incentive plan, in 2007, and our stockholders approved the 2007 incentive plan in 2007. The 2007 incentive plan will become effective immediately upon the signing of the underwriting agreement for this offering. The 2007 incentive plan will terminate on 2017, unless sooner terminated by our board of directors.

Stock Awards. The 2007 incentive plan provides for the grant of incentive stock options, nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of equity compensation, which may be granted to employees, including officers, non-employee directors, and consultants.

Share Reserve. Following this offering, the aggregate number of shares of our common stock that may be issued initially pursuant to stock awards under the 2007 incentive plan is shares. The number of shares of our common stock reserved for issuance will automatically increase on January 1st, from January 1, 2008 through January 1, 2017, by the lesser of (a) % of the total number of shares of our common stock outstanding on December 31st of the preceding calendar year and (b) shares. The maximum number of shares that may be issued pursuant to the exercise of incentive stock options under the 2007 incentive plan is equal to the total share reserve, as increased from time to time pursuant to annual increases and shares subject to options granted under the 2003 plan that expire without being exercised in full.

No person may be granted awards covering more than shares of our common stock under the 2007 incentive plan during any calendar year pursuant to an appreciation-only stock award. An appreciation-only stock award is a stock award whose value is determined by reference to an increase over an exercise or strike

price of at least 100% of the fair market value of our common stock on the date of grant. A stock option with an exercise price equal to the value of the stock on the date of grant is an example of an appreciation-only award. Such limitation is designed to help assure that any deductions to which we would otherwise be entitled upon the exercise of an appreciation-only stock award or upon the subsequent sale of shares purchased under such an award, will not be subject to the $1,000,000 limitation on the income tax deductibility of compensation paid per covered executive officer imposed by Section 162(m) of the Internal Revenue Code.

If a stock award granted under the 2007 incentive plan expires or otherwise terminates without being exercised in full, the shares of our common stock not acquired pursuant to the stock award again become available for subsequent issuance under the 2007 incentive plan. In addition, the following types of shares under the 2007 incentive plan may become available for the grant of new stock awards under the 2007 incentive plan: (a) shares that are forfeited to or repurchased by us prior to becoming fully vested, (b) shares withheld to satisfy income and employment withholding taxes, (c) shares used to pay the exercise price of an option in a net exercise arrangement, (d) shares tendered to us to pay the exercise price of an option and (e) shares that are cancelled pursuant to an exchange or repricing program. Shares issued under the 2007 incentive plan may be previously unissued shares or reacquired shares bought on the open market. As of the date hereof, no shares of our common stock have been issued under the 2007 incentive plan.

Administration. Our board of directors has delegated its authority to administer the 2007 incentive plan to our compensation committee. Subject to the terms of the 2007 incentive plan, our board of directors or an authorized committee, referred to as the plan administrator, determines recipients, dates of grant, the numbers and types of stock awards to be granted, and the terms and conditions of the stock awards, including the period of their exercisability and vesting. Subject to the limitations set forth below, the plan administrator will also determine the exercise price of options granted, the consideration to be paid for restricted stock awards, and the strike price of stock appreciation rights.

The plan administrator has the authority to:

- reduce the exercise price of any outstanding option or the strike price of any outstanding stock appreciation right;
- cancel any outstanding option or stock appreciation right and to grant in exchange one or more of the following:
    - new options or stock appreciation rights covering the same or a different number of shares of common stock,
    - new stock awards,
    - cash, and/or
    - other valuable consideration; or
- engage in any action that is treated as a repricing under generally accepted accounting principles.

Stock Options. Incentive and nonstatutory stock options are granted pursuant to incentive and nonstatutory stock option agreements adopted by the plan administrator. The plan administrator determines the exercise price for a stock option, within the terms and conditions of the 2007 incentive plan, provided that the exercise price of an incentive stock option and nonstatutory stock option cannot be less than 100% of the fair market value of our common stock on the date of grant. Options granted under the 2007 incentive plan vest at the rate specified by the plan administrator.

Generally, the plan administrator determines the term of stock options granted under the 2007 incentive plan, up to a maximum of ten years (except in the case of certain incentive stock options, as described below). Unless the terms of an optionee’s stock option agreement provide otherwise, if an optionee’s relationship with us,

or any of our affiliates, ceases for any reason other than disability or death, the optionee may exercise any vested options for a period of three months following the cessation of service. If an optionee's service relationship with us, or any of our affiliates, ceases due to disability or death (or an optionee dies within a certain period following cessation of service), the optionee or a beneficiary may exercise any vested options for a period of 12 months in the event of disability, and 18 months in the event of death. The option term may be extended in the event that exercise of the option following termination of service is prohibited by applicable securities laws. In no event, however, may an option be exercised beyond the expiration of its term.

Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will be determined by the plan administrator and may include (a) cash or check, (b) a broker-assisted cashless exercise, (c) the tender of common stock previously owned by the optionee, (d) a net exercise of the option and (e) other legal consideration approved by the plan administrator.

Unless the plan administrator provides otherwise, options generally are not transferable except by will, the laws of descent and distribution, or pursuant to a domestic relations order. An optionee may designate a beneficiary, however, who may exercise the option following the optionee's death.

Tax Limitations on Incentive Stock Options. Incentive stock options may be granted only to our employees. The aggregate fair market value, determined at the time of grant, of shares of our common stock with respect to incentive stock options that are exercisable for the first time by an optionee during any calendar year under all of our stock plans may not exceed $100,000. No incentive stock option may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our affiliates unless (a) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant and (b) the term of the incentive stock option does not exceed five years from the date of grant.

Restricted Stock Awards. Restricted stock awards are granted pursuant to restricted stock award agreements adopted by the plan administrator. Restricted stock awards may be granted in consideration for (a) cash or check, (b) past or future services rendered to us or our affiliates or (c) any other form of legal consideration. Shares of common stock acquired under a restricted stock award may, but need not, be subject to a share repurchase option in our favor in accordance with a vesting schedule to be determined by the plan administrator. Rights to acquire shares under a restricted stock award may be transferred only upon such terms and conditions as set by the plan administrator.

Restricted Stock Unit Awards. Restricted stock unit awards are granted pursuant to restricted stock unit award agreements adopted by the plan administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the plan administrator, or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect to shares covered by a restricted stock unit award. Except as otherwise provided in the applicable award agreement, restricted stock units that have not vested will be forfeited upon the participant's cessation of continuous service for any reason.

Stock Appreciation Rights. Stock appreciation rights are granted pursuant to stock appreciation rights agreements adopted by the plan administrator. The plan administrator determines the strike price for a stock appreciation right which cannot be less than 100% of the fair market value of our common stock on the date of grant. Upon the exercise of a stock appreciation right, we will pay the participant an amount equal to the product of (a) the excess of the per share fair market value of our common stock on the date of exercise over the strike price, multiplied by (b) the number of shares of common stock with respect to which the stock appreciation right is exercised. A stock appreciation right granted under the 2007 incentive plan vests at the rate specified in the stock appreciation right agreement as determined by the plan administrator.

The plan administrator determines the term of stock appreciation rights granted under the 2007 incentive plan, up to a maximum of ten years. If a participant's service relationship with us, or any of our affiliates, ceases, then the participant, or the participant's beneficiary, may exercise any vested stock appreciation right for three months (or such longer or shorter period specified in the stock appreciation right agreement) after the date such service relationship ends. In no event, however, may a stock appreciation right be exercised beyond the expiration of its term.

Performance Stock Awards. The 2007 incentive plan permits the grant of performance stock awards that may qualify as performance-based compensation that is not subject to the $1,000,000 limitation on the income tax deductibility of compensation paid per covered executive officer imposed by Section 162(m) of the Internal Revenue Code. To assure that the compensation attributable to one or more performance stock awards will so qualify, our compensation committee can structure one or more such awards so that stock will be issued or paid pursuant to such award only upon the achievement of certain pre-established performance goals during a designated performance period. The maximum benefit to be received by a participant in any calendar year attributable to performance stock awards may not exceed shares of our common stock.

Other Stock Awards. The plan administrator may grant other awards based in whole or in part by reference to our common stock. The plan administrator will set the number of shares under the award and all other terms and conditions of such awards.

Changes to Capital Structure. In the event that there is a specified type of change in our capital structure, such as a stock split, appropriate adjustments will be made to (a) the number of shares reserved under the 2007 incentive plan, (b) the maximum number of shares by which the share reserve may increase automatically each year, (c) the maximum number of appreciation-only stock awards and performance stock awards that can be granted in a calendar year and (d) the number of shares and exercise price or strike price, if applicable, of all outstanding stock awards.

Corporate Transactions. In the event of certain significant corporate transactions, all outstanding stock awards under the 2007 incentive plan may be assumed, continued or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue or substitute for such stock awards, then (a) with respect to any such stock awards that are held by individuals whose service with us or our affiliates has not terminated prior to the effective date of the corporate transaction, the vesting and exercisability provisions of such stock awards will be accelerated in full and such awards will be terminated if not exercised prior to the effective date of the corporate transaction and (b) all other outstanding stock awards will terminate if not exercised prior to the effective date of the corporate transaction. Our board of directors may also provide that the holder of an outstanding stock award not assumed in the corporate transaction will surrender such stock award in exchange for a payment equal to the excess of (a) the value of the property that the optionee would have received upon exercise of the stock award, over (b) the exercise price otherwise payable in connection with the stock award.

Changes in Control. In the event a participant's service relationship with us or a successor entity is terminated, actually without cause or constructively, within 12 months following, or one month prior to, the effective date of certain specified change in control transactions, the vesting and exercisability of all outstanding stock awards held by such participants will accelerate in full. Our board of directors has the discretion to provide additional acceleration of vesting and exercisability upon or after a change in control transaction as may be provided in the stock award agreement or any other written agreement between us or any of our affiliates and the participant.

2007 Non-Employee Directors Stock Option Plan

Our board of directors adopted our 2007 Non-Employee Directors Stock Option Plan, or 2007 directors plan, in 2007 and our stockholders approved the 2007 directors plan in 2007. The 2007

directors plan will become effective immediately upon the signing of the underwriting agreement for this offering. The 2007 directors plan provides for the automatic grant of nonstatutory stock options to purchase shares of common stock to our non-employee directors over their period of service on our board.

Share Reserve. Following this offering, the aggregate number of shares of common stock that may be issued initially pursuant to options granted under the 2007 directors plan is shares. The number of shares of common stock reserved for issuance will automatically increase on January 1st, from January 1, 2008 through January 1, 2017, by the excess of (a) the number of shares of common stock subject to options granted during the preceding calendar year, over (b) the number of shares added back to the share reserve during the preceding calendar year. If any option expires or terminates for any reason, in whole or in part, without having been exercised in full, the shares of common stock not acquired under such option will become available for future issuance under the 2007 directors plan. As of the date hereof, no shares of common stock have been issued under the 2007 directors plan. The following types of shares issued under the 2007 directors plan may again become available for the grant of new options: (a) any shares withheld to satisfy withholding taxes, (b) any shares used to pay the exercise price of an option in a net exercise arrangement and (c) shares tendered to us to pay the exercise price of an option.

Administration. All options granted under the 2007 directors plan are made in strict compliance with its express provisions. Subject to the provisions of the 2007 directors plan, our board of directors has the authority to construe and interpret the 2007 directors plan and the stock options granted under it, and to establish rules for its administration.

Initial Option. Pursuant to the terms of the 2007 directors plan, any individual who first becomes a non-employee director after this offering will automatically be granted an option to purchase shares of our common stock. The shares subject to each such initial option vest 25% on the first anniversary of the date of grant and the remainder in a series of 36 successive equal monthly installments thereafter.

Annual Option. Pursuant to the terms of the 2007 directors plan, each individual who is serving as a non-employee director on the date of an annual meeting of our stockholders, commencing with the annual meeting in 2008, will automatically be granted an option to purchase shares of our common stock on such date. The shares subject to each such annual option vest in a series of 12 successive equal monthly installments measured from the date of grant.

Terms of All Options. The exercise price of each option granted under the 2007 directors plan is equal to 100% of the fair market value of our common stock on the date of grant. The maximum term of options granted under the 2007 directors plan is ten years. If a non-employee director's service relationship with us, or any of our affiliates, whether as a non-employee director or subsequently as an employee, director or consultant of ours or an affiliate, ceases for any reason other than disability, death, or following a change in control, the optionee may exercise any vested options for a period of three months following the cessation of service. If such an optionee's service relationship with us, or any of our affiliates, ceases due to disability or death (or an optionee dies within a certain period following cessation of service), the option will accelerate in full and the optionee or a beneficiary may exercise the option for a period of 12 months in the event of disability, and 18 months in the event of death. If such an optionee's service terminates within 12 months following a specified change in control transaction, the option will accelerate in full and the optionee may exercise the option for a period of 12 months following the effective date of such a transaction. The option term may be extended in the event that exercise of the option following termination of service is prohibited by applicable securities laws. In no event, however, may an option be exercised beyond the expiration of its term.

Transferability of Options. Options granted under the 2007 directors plan are generally not transferable except by will, the laws of descent and distribution, or pursuant to a domestic relations order. However, an option may be transferred for no consideration upon written consent of our board of directors if (a) at the time of transfer, a Form S-8 registration statement under the Securities Act is available for the issuance of shares upon

the exercise of such transferred option or (b) the transfer is to the optionee's employer or its affiliate at the time of transfer.

Changes to Capital Structure. In the event that there is a specified type of change in our capital structure, such as a stock split, appropriate adjustments will be made to (a) the number of shares reserved under the 2007 directors plan, (b) the number of shares for which options are to be subsequently made to new and continuing non-employee directors and (c) the number of shares and exercise price of all outstanding options.

Corporate Transactions. In the event of certain significant corporate transactions, all outstanding options under the 2007 directors plan may be assumed, continued or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue or substitute for such options, then (a) with respect to any such options that are held by optionees then performing services for us or our affiliates, the vesting and exercisability of such options will be accelerated in full and such options will be terminated if not exercised prior to the effective date of the corporate transaction and (b) all other outstanding options will terminate if not exercised prior to the effective date of the corporate transaction. Our board of directors may also provide that the holder of an outstanding option not assumed in the corporate transaction will surrender such option in exchange for a payment equal to the excess of (a) the value of the property that the optionee would have received upon exercise of the option, over (b) the exercise price otherwise payable in connection with the option.

Changes in Control. The vesting and exercisability of options held by non-employee directors who are either (a) required to resign their position in connection with a specified change in control transaction or (b) removed from their position in connection with such a change in control will be accelerated in full.

2007 Employee Stock Purchase Plan

Our board of directors adopted our 2007 Employee Stock Purchase Plan, or 2007 purchase plan, in 2007 and our stockholders approved the 2007 purchase plan in 2007. The 2007 purchase plan will become effective immediately upon the signing of the underwriting agreement for this offering.

Share Reserve. Following this offering, the 2007 purchase plan authorizes the issuance of shares of our common stock pursuant to purchase rights granted to our employees or to employees of any of our designated affiliates. The number of shares of our common stock reserved for issuance will automatically increase on January 1st, from January 1, 2008 through January 1, 2017, by the lesser of (a) % of the total number of shares of our common stock outstanding on December 31st of the preceding calendar year or (b) shares. The 2007 purchase plan is intended to qualify as an "employee stock purchase plan" within the meaning of Section 423 of the Internal Revenue Code. As of the date hereof, no shares of our common stock have been purchased under the 2007 purchase plan.

Administration. Our board of directors has delegated its authority to administer the 2007 purchase plan to our compensation committee. The 2007 purchase plan is implemented through a series of offerings of purchase rights to eligible employees. Under the 2007 purchase plan, we may specify offerings with a duration of not more than 27 months, and may specify shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for employees participating in the offering. An offering may be terminated under certain circumstances, including following a determination that the accounting consequence of operating the 2007 purchase plan is not in our best interest.

Payroll Deductions. Generally, all regular employees, including executive officers, employed by us or by any of our affiliates may participate in the 2007 purchase plan and may contribute, normally through payroll deductions, up to 15% of their earnings for the purchase of our common stock under the 2007 purchase plan. Unless otherwise determined by our board of directors, common stock will be purchased for accounts of

employees participating in the 2007 purchase plan at a price per share equal to the lower of (a) 85% of the fair market value of a share of our common stock on the first date of an offering or (b) 85% of the fair market value of a share of our common stock on the date of purchase.

Reset Feature. Our board of directors may specify that if the fair market value of a share of our common stock on any purchase date within a particular offering period is less than the fair market value on the start date of that offering period, then the employees in that offering period will automatically be transferred and enrolled in a new offering period which will begin on the next day following such a purchase date.

Limitations. Employees may have to satisfy one or more of the following service requirements before participating in the 2007 purchase plan, as determined by our board of directors: (a) customarily employed for more than 20 hours per week, (b) customarily employed for more than five months per calendar year or (c) continuous employment with us or one of our affiliates for a period of time not to exceed two years. No employee may purchase shares under the 2007 purchase plan at a rate in excess of $25,000 worth of our common stock valued based on the fair market value per share of our common stock at the beginning of an offering for each year such a purchase right is outstanding. Finally, no employee will be eligible for the grant of any purchase rights under the 2007 purchase plan if immediately after such rights are granted, such employee has voting power over 5% or more of our outstanding capital stock measured by vote or value.

Changes to Capital Structure. In the event that there is a specified type of change in our capital structure, such as a stock split, appropriate adjustments will be made to (a) the number of shares reserved under the 2007 purchase plan, (b) the maximum number of shares by which the share reserve may increase automatically each year, and (c) the number of shares and purchase price of all outstanding purchase rights.

Corporate Transactions. In the event of certain significant corporate transactions, any then-outstanding rights to purchase our stock under the 2007 purchase plan will be assumed, continued or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue or substitute for such purchase rights, then the participants' accumulated contributions will be used to purchase shares of our common stock within ten business days prior to such corporate transaction, and such purchase rights will terminate immediately thereafter.

Cash Bonus Plan

We maintain an annual cash bonus plan to reward executive officers and other employees for successful achievement of company-wide and individual performance objectives. For more information regarding our annual cash bonus plan, please see "—Compensation Discussion and Analysis—Executive Compensation Program—Cash Bonuses."

401(k) Plan

Our employees are eligible to participate in our 401(k) plan. Our 401(k) plan is intended to qualify as a tax qualified plan under Section 401 of the Code. Our 401(k) plan provides that each participant may contribute a portion of his or her pretax compensation, up to a statutory limit, which for most employees is $15,500 in 2007 (with a larger "catch up" limit for older employees). Employee contributions are held and invested by the plan's trustee. Our 401(k) plan also permits us to make discretionary contributions and matching contributions, subject to established limits and a vesting schedule. To date, we have not made any contributions to the plan on behalf of participating employees.

Outstanding Equity Awards at Fiscal Year-End

The following table shows, for the fiscal year ended December 31, 2006, certain information regarding outstanding equity awards at fiscal year end for our named executive officers.

2006 Outstanding Equity Awards at Fiscal Year-End Table

	Option Awards(1)				Stock Awards(2)	
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)(3)
Bruce C. Cozadd	1,286,561	529,760	1.36	02/18/14		
	428,854	176,586	2.73	02/18/14		
	428,854	176,586	4.09	02/18/14		
					165,000	
Samuel R. Saks, M.D.	1,286,561	529,760	1.36	02/18/14		
	428,854	176,586	2.73	02/18/14		
	428,854	176,586	4.09	02/18/14		
					220,000	
Robert M. Myers	1,286,561	529,760	1.36	02/18/14		
	428,854	176,586	2.73	02/18/14		
	428,854	176,586	4.09	02/18/14		
					126,042	
Matthew K. Fust	491,134	202,232	1.36	02/18/14		
	163,713	67,411	2.73	02/18/14		
	163,713	67,411	4.09	02/18/14		
					27,500	
Carol A. Gamble	491,134	202,232	1.36	02/18/14		
	163,713	67,411	2.73	02/18/14		
	163,713	67,411	4.09	02/18/14		
					25,000	
Janne L.T. Wissel	491,134	202,232	1.36	02/18/14		
	163,713	67,411	2.73	02/18/14		
	163,713	67,411	4.09	02/18/14		
					61,875	

(1) For each named executive officer, the shares listed in the table above under "Option Awards" are subject to a single stock option award carrying the varying exercise prices as set forth in the table above. The shares subject to each stock option vest over a four year period, with 25% of the shares subject to the option vesting after one year, an additional 12.5% vesting six months thereafter, and the remaining shares subject to the stock option vesting on an equal monthly basis over the following 30 months. On each vesting date, the number of shares subject to each stock option award vest proportionately based on the exercise price associated with the shares, such that 60% of the shares vesting on each vesting date carry an exercise price equal to $1.36 per share, 20% carry an exercise price equal to $2.73 per share, and 20% carry an exercise price equal to $4.09 per share. All shares of common stock that are issued to a named executive officer pursuant to the exercise of his or her stock option award are subject to a right of repurchase, on the same terms as "vested shares" as described under "—Executive Employment Agreements."

(2) For each named executive officer, our right to repurchase the unvested shares listed in the table above under "Stock Awards" lapses on a monthly basis at the rate of 2.08% per month.

(3) The market value of the unvested shares has been calculated assuming a price per share of $, which is the mid-point of the range reflected on the cover page of this prospectus, multiplied by the number of unvested shares.

Option Exercises and Stock Vested

Our named executive officers did not exercise any stock options during the year ended December 31, 2006. The following table shows certain information regarding stock vested during the year ended December 31, 2006 for our named executive officers.

2006 Option Exercises and Stock Vested Table

	Stock Awards	
Name	**Number of Shares Acquired on Vesting (#)**	**Value Realized on Vesting ($)(1)**
Bruce C. Cozadd	495,000	
Samuel R. Saks, M.D.	660,000	
Robert M. Myers	261,875	
Matthew K. Fust	82,500	
Carol A. Gamble	75,000	
Janne L.T. Wissel	82,500	

(1) The value realized on vesting has been calculated assuming a price per share of $, which is the mid-point of the range reflected on the cover page of this prospectus, multiplied by the number of shares vested.

Pension Benefits

Our named executive officers did not participate in, or otherwise receive any benefits under, any pension or retirement plan sponsored by us during the year ended December 31, 2006.

Nonqualified Deferred Compensation

During the year ended December 31, 2006, our named executive officers did not contribute to, or earn any amounts with respect to, any defined contribution or other plan sponsored by us that provides for the deferral of compensation on a basis that is not tax-qualified.

Non-Employee Director Compensation

The non-employee members of our board of directors are reimbursed for travel and other reasonable expenses incurred in attending board or committee meetings. Other than respect to Mr. Sebulsky, members of our board of directors do not currently receive cash compensation for attending board or committee meetings. Mr. Sebulsky currently receives $1,500 for each board meeting he attends and $500 for each committee meeting he attends.

After this offering, we will continue to reimburse our non-employee directors for their travel and other reasonable expenses incurred in attending board or committee meetings. In addition, each non-employee director will receive an annual retainer of $. The chair of the audit committee will receive a supplemental annual retainer of $, the chair of the compensation committee will receive a supplemental annual retainer of $, and the chair of the nominating and corporate governance committee will receive a supplement annual retainer of $. Additionally, our non-employee directors will receive nonstatutory stock options under our 2007 directors plan, which will become effective immediately upon the signing of the underwriting agreement for this offering. The terms of these nonstatutory stock options are described under “—Executive Compensation—Employee Benefit Plans—2007 Non-Employee Directors Stock Option Plan” above.

The following table shows for the fiscal year ended December 31, 2006 certain information with respect to the compensation of all of our non-employee directors.

2006 Director Compensation Table

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(2)(3)	Total ($)
Adam H. Clammer	—	—	—
Samuel D. Colella	—	—	—
Bryan C. Cressey(1)	—	—	—
David Mayer(1)	—	—	—
Michael W. Michelson	—	—	—
James C. Momtazee	—	—	—
Kenneth W. O'Keefe	—	—	—
Alan M. Sebulsky.	9,500(4)	22,475	31,975
James B. Tananbaum, M.D.	—	—	—

(1) Mr. Cressey joined our board of directors in October 2006 following the resignation of Mr. Mayer.
(2) We did not grant any stock option awards to our directors in 2006. The dollar amount in this column represents the compensation cost for the year ended December 31, 2006 of a stock option award granted in 2004. This amount has been calculated in accordance with SFAS No. 123R using the Black-Scholes option-pricing model. Pursuant to SEC rules, the amount shown excludes the impact of estimated forfeiture related to service-based vesting conditions. For a discussion of valuation assumptions, see Note 14 to our consolidated financial statements included elsewhere in this prospectus.
(3) At December 31, 2006, Mr. Sebulsky held a stock option exercisable for 100,000 shares of our common stock carrying an exercise price of $1.36 per share, 50,000 shares of which were vested and exercisable at December 31, 2006. None of the other directors listed in the table above held any outstanding stock options at December 31, 2006.
(4) Consists of fees earned for board and committee meeting attendance.

Limitation of Liability and Indemnification

Our third amended and restated certificate of incorporation and amended and restated bylaws to be in effect upon the closing of this offering limit the liability of our directors, officers, employees and other agents to the fullest extent permitted by Delaware law; provided, however, that we indemnify any such person in connection with a proceeding initiated by such person only if such indemnification is expressly required by law, the proceeding was authorized by our board of directors, the indemnification is provided by us, in our sole discretion, pursuant to the Delaware General Corporation Law or other applicable law or is otherwise expressly required by our amended and restated bylaws. Section 145 of the Delaware General Corporation Law permits indemnification of officers, directors and other agents under certain circumstances and subject to certain limitations. Delaware law also permits a corporation to not hold its directors personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for: (1) breach of their duty of loyalty to the corporation or its stockholders, (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) unlawful payments of dividends or unlawful stock repurchases or redemptions and (4) any transaction from which the director derived an improper personal benefit. This limitation of liability does not apply to liabilities arising under the federal or state securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity. We have obtained directors and officers' liability insurance to cover certain liabilities described above. Messrs. Clammer, Michelson and Momtazee are further insured by liability insurance that has been purchased by Kohlberg Kravis Roberts & Co. L.P. on their behalf for any excess liabilities that are not covered by our liability insurance. Mr. Colella is insured by liability insurance purchased on his behalf by, and indemnified pursuant to the governing agreements of, Versant Ventures for his service on our board of directors.

We have entered into indemnity agreements with each of our directors and executive officers, that require us to indemnify such persons against any and all expenses (including attorneys' fees), witness fees, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any action, suit or proceeding or alternative dispute resolution mechanism, inquiry hearing or investigation, whether threatened, pending or completed, to which any such person may be made a party by reason of the fact that such person is or was a director, an officer or an employee of us or any of our affiliated enterprises, provided that such person's conduct did not constitute a breach of his or her duty of loyalty to us or our stockholders, and was not an act or omission not in good faith or which involved intentional misconduct or a knowing violation of laws. The indemnity agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. We believe that these provisions and agreements are necessary to attract and retain qualified persons as officers and directors of our company.

At present, there is no pending litigation or proceeding involving a director or officer of our company for which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted by directors, executive officers or persons controlling us, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a summary of transactions since our inception to which we have been a party in which the amount involved exceeded $120,000 and in which any of our executive officers, directors or beneficial holders of more than 5% of our capital stock had or will have a direct or indirect material interest, other than compensation arrangements which are described under the section of this prospectus entitled “Management—Executive Compensation.”

Sales of Securities

The shares of common stock set forth in the table below were purchased by our executive officers and directors in March 2003 at a per share price of $.0023, in April 2003 at per share prices of $.005 and $.01, in October 2003 at a per share price of $.10, in January 2004 at a per share price of $.10 and in September 2004 at a per share price of $1.3636, for aggregate consideration of $338,033.

During the period from April 2003 through January 2004, we issued and sold an aggregate of 15,000,000 shares of our Series A preferred stock at a per share price of $1.00 for aggregate consideration of $15.0 million. During the period from February 2004 through December 2006, we issued and sold an aggregate of 88,002,330 shares of our Series B preferred stock at a per share price of $1.3636 for aggregate consideration of approximately $120.0 million. During the period from February 2004 through December 2006, we also issued and sold an aggregate of 95,335,875 shares of our Series B Prime preferred stock at a per share price of $1.3636 for aggregate consideration of approximately $130.0 million.

In June 2005, we issued warrants to purchase an aggregate of 8,695,652 shares of our Series BB preferred stock in connection with the issuance of senior secured notes in the aggregate principal amount of $80.0 million. The warrants have an exercise price of $1.84 per share. In connection with the conversion of all our outstanding shares of preferred stock into common stock immediately prior to the closing of this offering, the warrants will automatically become exercisable for shares of common stock. These warrants will terminate on June 24, 2012, unless exercised earlier.

We believe that the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described were comparable to terms available or the amounts that would be paid or received, as applicable, in arm's-length transactions.

Purchaser	Common Stock	Series A Preferred Stock	Series B Preferred Stock	Series B Prime Preferred Stock	Series BB Preferred Stock Warrants
Executive Officers and Directors					
Bruce C. Cozadd(1)	1,980,000	—	733,352	—	—
Samuel R. Saks, M.D.(2)	2,640,000	150,000	733,352	—	—
Robert M. Myers(3)	1,047,500	—	513,347	—	—
Matthew K. Fust(4)	330,000	—	220,005	—	—
Carol A. Gamble(5)	300,000	—	—	—	—
Janne L.T. Wissel(6)	330,000	—	733,352	—	—
Alan M. Sebulsky(7)	146,671	—	—	—	—
Principal Stockholders(8)					
Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.(9)	—	—	—	95,335,875	2,717,391
Entities affiliated with Thoma Cressey Bravo, Inc.(10)	—	—	22,000,585	—	—
Entities affiliated with Beecken Petty O'Keefe & Company(11)	—	—	14,667,057	—	—
Entities affiliated with Prospect Venture Partners(12)	—	7,425,000	6,233,499	—	—
Entities affiliated with Versant Ventures(13)	—	7,425,000	6,233,499	—	—
Entities affiliated with Golden Gate Capital(14)	—	—	11,000,287	—	—
Entities affiliated with Lehman Brothers Holdings Inc.(15)	—	—	7,333,528	—	3,369,566

(1) Includes 165,000 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on April 1, 2007.
(2) Includes 220,000 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on April 1, 2007.
(3) Includes 126,042 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on December 18, 2007.
(4) Includes 27,500 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on April 30, 2007.
(5) Includes 25,000 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on April 18, 2007.
(6) Includes 61,875 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on September 3, 2007.
(7) Includes 58,058 shares of common stock that are subject to our right of repurchase as of December 31, 2006, which such right of repurchase lapses in full on July 13, 2008.
(8) Certain of our directors are associated with our principal stockholders as indicated in the table below:

Director	Principal Stockholder
Adam H. Clammer	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
Samuel D. Colella	Entities affiliated with Versant Ventures
Bryan C. Cressey	Entities affiliated with Thoma Cressey Bravo
Michael W. Michelson	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
James C. Momtazee	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
Kenneth W. O'Keefe	Entities affiliated with Beecken Petty O'Keefe & Company
James B. Tananbaum, M.D.	Entities affiliated with Prospect Venture Partners

(9) Consists of 94,932,531 shares of Series B Prime preferred stock held by KKR JP LLC, 403,344 shares of Series B Prime preferred stock held by KKR JP III LLC and warrants to purchase 2,717,391 shares of Series BB preferred stock held by KKR TRS Holdings, Inc.

(10) Consists of 21,662,348 shares of Series B preferred stock held by Thoma Cressey Fund VII, LP and 338,237 shares of Series B preferred stock held by Thoma Cressey Friends Fund VII, LP.
(11) Consists of 14,667,057 shares of Series B preferred stock held by Jazz Investors LLC.
(12) Consists of 7,313,625 shares of Series A preferred stock and 6,139,997 shares of Series B preferred stock held by Prospect Venture Partners II, L.P. and 111,375 shares of Series A preferred stock and 93,502 shares of Series B preferred stock held by Prospect Associates II, L.P.
(13) Consists of 7,223,361 shares of Series A preferred stock and 6,064,216 shares of Series B preferred stock held by Versant Venture Capital II, L.P., 137,080 shares of Series A preferred stock and 115,083 shares of Series B preferred stock held by Versant Affiliates Fund II-A, L.P., and 64,559 shares of Series A preferred stock and 54,200 shares of Series B preferred stock held by Versant Side Fund II, L.P.
(14) Consists of 9,521,349 shares of Series B preferred stock held by CCG Investment Fund, LP, 480,987 shares of Series B preferred stock held by CCG AV, LLC-Series C, 523,132 shares of Series B preferred stock held by CCG Associates-QP, LLC, 127,260 shares of Series B preferred stock held by CCG AV, LLC-Series A, 127,553 shares of Series B preferred stock held by CCG Investment Fund-AI, LP, and 220,006 shares of Series B preferred stock held by CCG CI, LLC.
(15) Consists of 1,833,382 shares of Series B preferred stock held by Lehman Brothers HealthCare Venture Capital LP, 3,509,093 shares of Series B preferred stock held by Lehman Brothers PA LLC, 1,581,017 shares of Series B preferred stock held by Lehman Brothers Partnership Account 2000/2001, LP, 410,036 shares of Series B preferred stock held by Lehman Brothers Offshore Partnership Account 2000/2001 LP, and warrants to purchase 3,369,566 shares of Series BB Preferred Stock held by LB I Group Inc. Lehman Brothers Holdings Inc. is affiliated with Lehman Brothers Inc., which is acting as a representative of the underwriters of this offering.

Senior Secured Notes

In June 2005, we issued senior secured notes in the aggregate principal amount of $80.0 million with interest payable on the notes at the rate of 15% per year, payable quarterly in arrears. The notes are due and payable on June 24, 2011. As of December 31, 2006, KKR TRS Holdings, Inc., an entity affiliated with Kohlberg Kravis Roberts & Co. L.P., and LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., both of which are significant stockholders, held $25.0 million and $31.0 million, respectively, in principal amount of these senior secured notes which represented the largest aggregate amount of principal balance outstanding to date for each of these note holders. The interest payments made to KKR TRS Holdings, Inc. during the fiscal years ended December 31, 2006 and 2005 were approximately $3.8 million and $1.9 million, respectively. The interest payments made to LB I Group during the fiscal years ended December 31, 2006 and 2005 were approximately $4.6 million and $2.3 million, respectively. There were no payments of principal made in either of these periods. Lehman Brothers Inc., one of the representatives of the underwriters of this offering, is affiliated with Lehman Brothers Holdings Inc. In connection with the issuance of the senior secured notes, we issued warrants to purchase 2,717,391 and 3,369,566 shares of our Series BB preferred stock to KKR TRS Holdings, Inc. and LB I Group, respectively.

Second Amended and Restated Investor Rights Agreement

We entered into an investor rights agreement with certain purchasers of our common stock, preferred stock and warrants to purchase our Series BB preferred stock, including our principal stockholders with which certain of our directors are affiliated. As of January 31, 2007, the holders of 213,661,357 shares of our common stock, including the shares of common stock issuable upon the conversion of our preferred stock and exercise of outstanding warrants, are entitled to rights with respect to the registration of their shares under the Securities Act. In addition, upon exercise of outstanding options by our executive officers, our executive officers will be entitled to rights with respect to registration of the shares of common stock acquired upon exercise. For a description of these registration rights, see “Description of Capital Stock—Registration Rights.”

Second Amended and Restated Voting Agreement

The election of the members of our board of directors is governed by a voting agreement with certain of the purchasers of our outstanding common stock, preferred stock and warrants to purchase our Series BB preferred stock, including our principal stockholders with which certain of our directors are affiliated, and by related provisions of our second amended and restated certificate of incorporation. The parties to the voting agreement have agreed, subject to certain conditions, to vote their shares so as to elect as directors the nominees designated

by certain of our investors, including KKR JP LLC and its affiliated funds, Thoma Cressey Fund VII, L.P. and its affiliated funds, Jazz Investors LLC, Versant Venture Capital II, L.P. and its affiliated funds, and Prospect Venture Partners II, L.P. and its affiliated funds. In addition, so long as Mr. Cozadd and Dr. Saks are employed by us, the parties to the voting agreement have agreed to vote their shares so as to elect each of Mr. Cozadd and Dr. Saks to our board of directors. The parties further agreed to vote their shares so as to elect up to three persons who are not affiliates of us or any of our stockholders, and which nominees are nominated by at least two-thirds of our board of directors. Upon the closing of this offering, the obligations of the parties to the voting agreement to vote their shares so as to elect as these nominees will terminate and none of our stockholders will have any special rights regarding the nomination, election or designation of members of our board of directors.

Other Transactions

We have entered into employment agreements with our executive officers that, among other things, provide for certain severance and change of control benefits. For a description of these agreements, see “Management—Executive Compensation—Executive Employment Agreements.”

We have granted stock options to our executive officers and to one of our directors. For a description of these options, see “Management—Non-Employee Director Compensation” and “—Executive Compensation.”

We have entered into indemnity agreements with our directors and executive officers. For a description of these agreements, see “Management—Limitation of Liability and Indemnification.”

PRINCIPAL STOCKHOLDERS

The following table sets forth the beneficial ownership of our common stock as of January 31, 2007 by:

- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock;
- each of the named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The percentage ownership information shown in the table is based upon 205,246,300 shares outstanding as of January 31, 2007, assuming the conversion of all outstanding shares of our preferred stock as of January 31, 2007, and the issuance of shares of common stock in this offering. The percentage ownership information assumes no exercise of the underwriters' overallotment option.

Information with respect to beneficial ownership has been furnished by each director, officer or beneficial owner of more than 5% of our common stock. We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options or warrants that are either immediately exercisable or exercisable on or before April 1, 2007, which is 60 days after January 31, 2007. These shares are deemed to be outstanding and beneficially owned by the person holding those options or a warrant for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Except as otherwise noted below, the address for person or entity listed in the table is c/o Jazz Pharmaceuticals, Inc., 3180 Porter Drive, Palo Alto, California 94304.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders			
Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.			
KKR JP, LLC(1)	94,932,531	46.25%	
KKR JP III LLC(1)	403,344	*	*
KKR TRS Holdings, Inc.(2)	2,717,391	1.31	
Entities affiliated with Thoma Cressey Bravo, Inc.(3)	22,000,585	10.72	
Entities affiliated with Beecken Petty O'Keefe & Company(4)	14,667,057	7.15	
Entities affiliated with Prospect Venture Partners(5)	13,658,499	6.65	
Entities affiliated with Versant Ventures(6)	13,658,499	6.65	
Entities affiliated with Golden Gate Capital(7)	11,000,287	5.36	
Entities affiliated with Lehman Brothers Holdings Inc.(8)	10,703,094	5.13	
Named Executive Officers and Directors			
Bruce C. Cozadd(9)	5,046,818	2.43	
Samuel R. Saks, M.D.(10)	5,856,818	2.82	
Robert M. Myers(11)	3,894,313	1.88	
Matthew K. Fust(12)	1,440,788	*	*
Janne L.T. Wissel(13)	1,954,135	*	*
Carol A. Gamble(14)	1,190,783	*	*
Adam H. Clammer(15)	98,053,266	47.15	
Samuel D. Colella(16)	13,658,499	6.65	
Bryan C. Cressey(17)	22,000,585	10.72	
Michael W. Michelson(18)	98,053,266	47.15	
James C. Momtazee(19)	98,053,266	47.15	
Kenneth W. O'Keefe(20)	14,667,057	7.15	
Alan M. Sebulsky(21)	196,671	*	*
James B. Tananbaum, M.D.(22)	13,658,499	6.65	
All directors and executive officers as a group (14 persons)(23)	181,618,232	83.43%	

* Represents beneficial ownership of less than 1%.

(1) All of the outstanding equity interests of KKR JP LLC are owned directly by KKR Millennium Fund L.P. KKR Millennium GP LLC is the general partner of KKR Associates Millennium L.P., which is the general partner of KKR Millennium Fund L.P. All of the outstanding equity interests of KKR JP III LLC are owned directly by KKR Partners III, L.P. KKR III GP LLC is the general partner of KKR Partners III, L.P. The entities named in this footnote (1) are sometimes referred to as the KKR Funds. KKR Millennium GP LLC and KKR III GP LLC are limited liability companies, the managing members of which are Messrs. Henry R. Kravis and George R. Roberts, and the other members of which are James H. Greene, Jr., Paul E. Raether, Mr. Michelson, Perry Golkin, Johannes P. Huth, Todd A. Fisher, Alexander Navab, Marc Lipschultz, Jacques Garaialde, Reinhard Gorenflos, Michael M. Calbert and Scott C. Nuttall. Mr. Michelson is a member of our board of directors. Each of such individuals may be deemed to share beneficial ownership of any shares beneficially owned by KKR Millennium GP LLC and KKR III GP LLC, but disclaim beneficial ownership of such shares. Mr. Clammer is a member of our board of directors and is a member of KKR & Co. L.L.C. which is the general partner of Kohlberg Kravis Roberts & Co. L.P., which is an affiliate of the KKR Funds. Mr. Momtazee is a member of our board of directors and is an executive of Kohlberg Kravis Roberts & Co. L.P. Each of Messrs. Clammer and Momtazee disclaim beneficial ownership of any shares beneficially owned by the KKR Funds. The address of the KKR Funds and Messrs. Kravis, Raether, Golkin, Navab, Lipschultz and Nuttall is c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, NY 10019. The address of Messrs. Roberts, Michelson, Greene, Calbert, Clammer and Momtazee is 2800 Sand Hill Road, Suite 200, Menlo Park, CA 94025. The address of Messrs. Fisher, Huth, Gorenflos and Garaialde is c/o Kohlberg Kravis Roberts & Co. Ltd., Stirling Square, 7 Carlton Garden, London SW1Y 5AD, England.

(2) Consists of 2,717,391 shares that KKR TRS Holdings, Inc. has the right to acquire within 60 days of January 31, 2007 through the exercise of a warrant. All of the outstanding equity interests of KKR TRS Holdings, Inc. are owned by KKR Financial Corp. KKR Financial Advisors LLC is the manager of KKR Financial Corp. KKR Financial LLC is the sole member of KKR Financial Advisors LLC. Kohlberg Kravis Roberts & Co. L.P. owns a majority of the outstanding equity interests of KKR Financial LLC. KKR & Co. L.L.C. is the general partner of Kohlberg Kravis Roberts & Co. L.P. The investment committee of KKR Financial Advisors LLC

reviews the investments held by KKR Financial Corp. Mr. Nuttall is one of four members of the investment committee, and Messrs. Kravis and Roberts are ad hoc members of the investment committee. The members of KKR & Co. L.L.C. consist of the individuals named in footnote (1) above (other than Mr. Momtazee) and other executives of Kohlberg Kravis Roberts & Co. L.P., and in such capacity may be deemed to share beneficial ownership of any shares beneficially owned by KKR & Co. L.L.C., but disclaim beneficial ownership of such shares. The address of KKR TRS Holdings, Inc., KKR Financial Corp. and KKR Financial LLC is 555 California Street, 50th Floor, San Francisco, CA 94104.

(3) Consists 21,662,348 shares held by Thoma Cressey Fund VII, LP and 338,237 shares held by Thoma Cressey Friends Fund VII, LP. Mr. Cressey, Orlando Bravo, Lee Mitchell and Carl Thoma are partners of Thoma Cressey Bravo, Inc., which is the general partner of each of Thoma Cressey Fund VII, LP and Thoma Cressey Friends Fund VII, LP., or the Thoma Cressey Funds, and are deemed to have shared voting and investment power over the shares held by the Thoma Cressey Funds. Each of Messrs. Cressey, Bravo, Mitchell and Thoma disclaim beneficial ownership of the shares held by the Thoma Cressey Funds, except to the extent of each of their pecuniary interest therein. The address for all entities and individuals affiliated with Thoma Cressey Bravo is Sears Tower, 92nd Floor, 22 South Wacker Drive, Chicago, IL 60606.

(4) Consists of 14,667,057 shares held by Jazz Investors LLC. Mr. O'Keefe, David K. Beecken, William G. Petty, Jr., Thomas A. Schlesinger, David J. Cooney, Gregory A. Moerschel and John W. Kneen are partners of Beecken Petty O'Keefe & Company, which is the general partner of Jazz Investors LLC, and are deemed to have shared voting and investment power over the shares held by Jazz Investors LLC. Each of Messrs. O'Keefe, Beecken, Petty, Schlesinger, Cooney, Moerschel and Kneen disclaim beneficial ownership of the shares held by Jazz Investors LLC, except to the extent of each of their pecuniary interest therein. The address for all entities and individuals affiliated with Beecken Petty O'Keefe & Company is 131 South Dearborn Street, Ste. 2800, Chicago, IL 60603.

(5) Consists of 13,453,622 shares held by Prospect Venture Partners II, L.P. and 204,877 shares held by Prospect Associates II, L.P. Dr. Tananbaum is a managing member of Prospect Management Co. II, L.L.C., which is the general partner of each of Prospect Venture Partners II, L.P. and Prospect Associates II, L.P., or the Prospect Funds. The managing members of Prospect Management Co. II, L.L.C. are deemed to have shared voting and investment power over the shares held by the Prospect Funds. Dr. Tananbaum disclaims beneficial ownership of the shares held by the Prospect Funds, except to the extent of his pecuniary interest therein. The address for all entities and individuals affiliated with Prospect Venture Partners is 435 Tasso Street, Suite 200, Palo Alto, CA 94301.

(6) Consists of 13,287,577 shares held by Versant Venture Capital II, L.P., 252,163 shares held by Versant Affiliates Fund II-A, L.P. and 118,759 shares held by Versant Side Fund II, L.P. Mr. Colella is a managing member of Versant Ventures II, LLC, which is the general partner of each of Versant Venture Capital II, L.P., Versant Affiliates Fund II-A, L.P. and Versant Side Fund II, L.P., or the Versant Funds, and is deemed to have shared voting and investment power over the shares held by the Versant Funds. Mr. Colella disclaims beneficial ownership of the shares held by the Versant Funds, except to the extent of his pecuniary interest therein. The address for all entities and individuals affiliated with Versant Ventures II LLC is 3000 Sand Hill Road, Building 4, Ste. 210, Menlo Park, CA 94025.

(7) Consists of 523,132 shares held by CCG Associates-QP, LLC, 127,260 shares held by CCG AV, LLC-Series A, 480,987 shares held by CCG AV, LLC-Series C, 220,006 shares held by CCG CI, LLC, 9,521,349 shares held by CCG Investment Fund, LP and 127,553 shares held by CCG Investment Fund-AI, LP. Golden Gate Capital Management, L.L.C. is the general partner or managing member of CCG Associates-QP, LLC, CCG AV, LLC-Series A, CCG AV, LLC-Series C, CCG CI, LLC, CCG Investment Fund, LP and CCG Investment Fund–AI, LP, or the CCG Funds. Messrs. David C. Dominik and Jesse T. Rogers, as principal managing members of Golden Gate Capital Management, L.L.C., are deemed to have shared voting and investment power over the shares held by the CCG Funds. Each of Messrs. Dominik and Rogers disclaim beneficial ownership of the shares held by the CCG Funds, except to the extent of each of their pecuniary interest therein. The address for all entities and individuals affiliated with Golden Gate Capital is One Embarcadero Center, 33rd Floor, San Francisco, CA 94111.

(8) Consists of 1,833,382 shares held by Lehman Brothers HealthCare Venture Capital LP, 3,509,093 shares held by Lehman Brothers PA LLC, 1,581,017 shares held by Lehman Brothers Partnership Account 2000/2001, LP, 410,036 shares held by Lehman Brothers Offshore Partnership Account 2000/2001 LP, and warrants to purchase 3,369,566 shares held by LB I Group Inc. Each of the foregoing entities is managed by a subsidiary of Lehman Brothers Holdings Inc. The address for all entities and individuals affiliated with Lehman Brothers Holdings Inc. is 399 Park Avenue, New York, NY 10022. Lehman Brothers Holdings Inc. is affiliated with Lehman Brothers Inc., which is acting as a representative of the underwriters of this offering.

(9) Includes 2,333,466 shares Mr. Cozadd has the right to acquire within 60 days of January 31, 2007 through the exercise of options.

(10) Includes 2,333,466 shares Dr. Saks has the right to acquire within 60 days of January 31, 2007 through the exercise of options.

(11) Includes 2,333,466 shares Mr. Myers has the right to acquire within 60 days of January 31, 2007 through the exercise of options, and 43,594 shares subject to our unvested share repurchase right within 60 days of January 31, 2007.

(12) Includes 890,783 shares Mr. Fust has the right to acquire within 60 days of January 31, 2007 through the exercise of options, and 6,875 shares subject to our unvested share repurchase right within 60 days of January 31, 2007.

(13) Includes 890,783 shares Ms. Wissel has the right to acquire within 60 days of January 31, 2007 through the exercise of options, and 41,250 shares subject to our unvested share repurchase right within 60 days of January 31, 2007.

(14) Includes 890,783 shares Ms. Gamble has the right to acquire within 60 days of January 31, 2007 through the exercise of options, and 6,250 shares subject to our unvested share repurchase right within 60 days of January 31, 2007.

(15) Consists solely of the shares described in Notes (1) and (2) above. Mr. Clammer disclaims beneficial ownership of these shares.

(16) Consists solely of the shares described in Note (6) above. Mr. Colella disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.

(17) Consists solely of the shares described in Note (3) above. Mr. Cressey disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.

(18) Consists solely of the shares described in Notes (1) and (2) above. Mr. Michelson disclaims beneficial ownership of these shares.

(19) Consists solely of the shares described in Notes (1) and (2) above. Mr. Momtazee disclaims beneficial ownership of these shares.
(20) Consists solely of the shares described in Note (4) above. Mr. O'Keefe disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.
(21) Includes 50,000 shares Mr. Sebulsky has the right to acquire within 60 days of January 31, 2007 through the exercise of options, and 48,891 shares subject to our unvested share repurchase right within 60 days of January 31, 2007.
(22) Consists solely of the shares described in Note (5) above. Dr. Tananbaum disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.
(23) Includes 162,037,906 shares held by entities affiliated with certain of our directors, 9,722,747 shares that certain of our executive officers and directors have the right to acquire within 60 days of January 31, 2007 through the exercise of options and 146,860 shares subject to our unvested share repurchase right within 60 days of January 31, 2007.

DESCRIPTION OF CAPITAL STOCK

Upon the closing of this offering and the filing of our third amended and restated certificate of incorporation, our authorized capital stock will consist of shares of common stock, par value $.0001 per share, and shares of preferred stock, par value $.0001 per share.

The following is a summary of the rights of our common stock and preferred stock. This summary is not complete. For more detailed information, please see our third amended and restated certificate of incorporation and amended and restated bylaws, which are filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Outstanding Shares

Based on 6,908,095 shares of common stock outstanding as of January 31, 2007, the conversion of outstanding preferred stock as of January 31, 2007 into 198,338,205 shares of common stock upon the completion of this offering, the issuance of shares of common stock in this offering, and no exercise of options or warrants, there will be shares of common stock outstanding upon the closing of this offering. As of January 31, 2007, assuming the conversion of all outstanding preferred stock into common stock upon the closing of this offering, we had approximately 44 record holders of our common stock.

As of January 31, 2007, there were 8,695,652 shares of common stock subject to outstanding warrants, assuming the conversion of all outstanding preferred stock into common stock upon the closing of this offering, and 17,572,774 shares of common stock subject to outstanding options.

Voting Rights

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our third amended and restated certificate of incorporation and amended and restated bylaws do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

Rights and Preferences

Holders of common stock have no preemptive, conversion, subscription or other rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

Fully Paid and Nonassessable

All of our outstanding shares of common stock are, and the shares of common stock to be issued pursuant to this offering will be, fully paid and nonassessable.

Preferred Stock

Upon the closing of this offering, all outstanding shares of preferred stock will have been converted into shares of common stock. See Note 12 to our consolidated financial statements for a description of the currently outstanding preferred stock. Following this offering, our third amended and restated certificate of incorporation will be amended and restated to delete all references to such shares of preferred stock. Under our third amended and restated certificate of incorporation, our board of directors will have the authority, without further action by the stockholders, to issue up to shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations or restrictions thereon and to increase or decrease the number of shares of any such series (but not below the number of shares of such series then outstanding).

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 the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in our control and may adversely affect the market price of the common stock and the voting and other rights of the holders of common stock. We have no current plans to issue any shares of preferred stock.

Warrants

As of January 31, 2007, warrants exercisable for 8,695,652 shares of our Series BB preferred stock at an exercise price of $1.84 per share were outstanding. These warrants were issued in June 2005 under a senior secured note and warrant purchase agreement entered into in connection with our acquisition of Orphan Medical. In connection with the conversion of all our outstanding shares of preferred stock into common stock immediately prior to the closing of this offering, the warrants will automatically become exercisable for shares of common stock. The warrants have a net exercise provision under which their holders may, in lieu of payment of the exercise price in cash, surrender the warrant and receive a net amount of shares based on the fair market value of our stock at the time of exercise of the warrants after deduction of the aggregate exercise price. The warrants contain provisions for the adjustment of the exercise price and the number of shares issuable upon the exercise of the warrants in the event of certain stock dividends, stock splits, reorganizations, reclassifications and consolidations. The warrants will terminate on June 24, 2012 if not exercised earlier.

Registration Rights

Under our investor rights agreement, following the closing of this offering, the holders of 213,661,357 shares of common stock, including warrants to purchase 8,695,652 shares of common stock, or their transferees, have the right to require us to register their shares with the SEC so that those shares may be publicly resold, or to include their shares in any registration statement we file, in each case as described below. If our executive officers exercise outstanding stock options, the shares of common stock acquired on exercise would have the registration rights described below.

Demand Registration Rights

At any time after six months following the effective date of the registration statement for this offering, the holders of at least 40% of the shares having registration rights (or a lesser number if the anticipated aggregate amount of shares to be sold is expected to not be less than $25.0 million), and each holder who was an original

purchaser of at least 50 million shares of our Series B preferred stock and/or Series B Prime preferred stock, each have the right to demand that we file one registration statement. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances.

Form S-3 Registration Rights

At any time after we are qualified to file a registration statement on Form S-3, the holders of at least 20% of the shares having registration rights and each holder who is an original purchaser of $40.0 million in original issue price of shares having registration rights, each have the right to demand that we file a registration statement on Form S-3 so long as the aggregate amount of shares to be sold under the registration statement on Form S-3 is at least $25.0 million. A holder who was an original purchaser of $40.0 million in original issue price of our shares having registration rights has the right to demand one registration statement for each $40.0 million in original issue price of such shares having registration rights that the holder purchased. We are only obligated to file up to two registration statement on Form S-3 in any 12 month period. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances.

Piggyback Registration Rights

At any time after the closing of this offering, if we propose to register any of our securities under the Securities Act either for our own account or for the account of other stockholders, a stockholder with registration rights will have the right to include their shares of common stock in the registration statement. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances, but not below 30% of the total number of shares included in the registration statement.

Expenses of Registration

We will pay all expenses relating to any demand registrations, Form S-3 registrations and piggyback registrations, other than underwriting discounts and commissions.

Termination

The registration rights and our obligations terminate upon the earlier of either February 18, 2016, or as to a given holder of registration rights, when such holder of registration rights can sell all of such holder’s registrable securities in a three month period pursuant to Rule 144 promulgated under the Securities Act.

Delaware Anti-Takeover Law and Certain Provisions of Our Third Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Delaware Law

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 generally prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person 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;
- 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 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.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

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

Third Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Provisions of our third amended and restated certificate of incorporation and amended and restated bylaws, which will become effective upon the closing of this offering, may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our third amended and restated certificate of incorporation and amended and restated bylaws:

- permit our board of directors to issue up to shares of preferred stock, with any rights, preferences and privileges as they may designate, including the right to approve an acquisition or other change in our control;
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner, and also specify requirements as to the form and content of a stockholder's notice;

- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our chief executive officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and
- provide that stockholders will be permitted to amend our amended and restated bylaws only upon receiving at least 66 2/3% of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class.

The amendment of any of these provisions would require approval by the holders of at least 66 2/3% of our then outstanding common stock, voting as a single class.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is . The transfer agent and registrar's address is .

NASDAQ Global Market Listing

We have applied for quotation of our common stock on the NASDAQ Global Market under the trading symbol "JAZZ."

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there has been no public market for our common stock. Future sales of substantial amounts of common stock in the public market could adversely affect prevailing market prices. Furthermore, since only a limited number of shares will be available for sale shortly after this offering because of contractual and legal restrictions on resale described below, sales of substantial amounts of common stock in the public market after the restrictions lapse could adversely affect the prevailing market price for our common stock as well as our ability to raise equity capital in the future.

Based on the number of shares of common stock outstanding as of January 31, 2007, upon completion of this offering, shares of common stock will be outstanding, assuming no exercise of the underwriters' over-allotment option and no exercise of options or warrants. All of the shares sold in this offering will be freely tradable unless purchased by our affiliates. Except as set forth below, the remaining shares of common stock outstanding after this offering will be restricted as a result of securities laws or lock-up agreements. These remaining shares will generally become available for sale in the public market as follows:

- no restricted shares will be eligible for immediate sale upon the closing of this offering;
- shares, less shares subject to a repurchase option in our favor tied to the holders' continued service to us (which will be eligible for sale upon lapse of the repurchase option), will be eligible for sale upon expiration of lock-up agreements 180 days after the date of this prospectus; and
- the remainder of the restricted shares will be eligible for sale from time to time thereafter upon expiration of their respective one-year holding periods, but could be sold earlier if the holders exercise any available registration rights.

Rule 144

In general, under Rule 144 under the Securities Act of 1933, as in effect on the date of this prospectus, a person who has beneficially owned shares of our common stock for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after 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 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 144(k)

Under Rule 144(k) of 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 two years, 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, public information, volume limitation or notice provisions of Rule 144. shares of our common stock will qualify for resale under Rule 144(k) within 180 days of the date of this prospectus.

Rule 701

Rule 701 under the Securities Act, as in effect on the date of this prospectus, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, executive officers or directors who purchased shares under a written

compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and under “Underwriters” and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

Lock-up Agreements

We, along with our directors, executive officers and substantially all of our other stockholders, optionholders and warrantholders have agreed with the underwriters that for a period of 180 days following the date of this prospectus, we or they will not offer, sell, assign, transfer, pledge, contract to sell or otherwise dispose of or hedge any shares of our common stock or any securities convertible into or exchangeable for shares of common stock, subject to specified exceptions. Morgan Stanley & Co. Incorporated and Lehman Brothers Inc. may, in their sole discretion, at any time without prior notice, release all or any portion of the shares from the restrictions in any such agreement.

The 180-day restricted period described in the preceding paragraph will be extended if:

- 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 us is publicly announced; or
- 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 period,

in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the release or the occurrence of the material news or material event, except in no event will the restrictions extend past 214 days after the date of this prospectus.

Registration Rights

Upon the closing of this offering, the holders of 213,661,357 shares of our common stock, including warrants exercisable for shares of our common stock will be entitled to rights with respect to the registration of their shares under the Securities Act, subject to the 180-day lock-up arrangement described above. Shares acquired upon exercise of outstanding options by our executive officers would have these registration rights. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act (except for shares held by affiliates) immediately upon the effectiveness of this registration. Any sales of securities by these stockholders could adversely effect on the trading price of our common stock. See “Description of Capital Stock—Registration Rights.”

Equity Incentive Plans

We intend to file with the SEC a registration statement under the Securities Act covering the shares of common stock subject to outstanding stock options granted under our 2003 Equity Incentive Plan, as well as the shares of common stock reserved for issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan. The registration statement is expected to be filed and become effective as soon as practicable after the closing of this offering. Accordingly, shares registered under the registration statement will be available for sale in the open market following its effective date, subject to Rule 144 volume limitations applicable to our affiliates and the lock-up agreements described above.

MATERIAL U.S. TAX CONSEQUENCES FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a general discussion of the material U.S. federal income and estate tax consequences of the ownership and disposition of our common stock by a non-U.S. holder. For purposes of this discussion, you are a "non-U.S. holder" if you are a beneficial owner of our common stock and you are not, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized in or under the laws of the United States, or of any political subdivision of the United States;
- an estate whose income is subject to U.S. federal income taxation regardless of its source; or
- a trust, in general, if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have authority to control all substantial decisions of the trust or if the trust has made a valid election to be treated as a U.S. person under applicable U.S. Treasury regulations.

If you are an individual, you may be treated as a resident of the United States in any calendar year for U.S. federal income tax purposes, instead of a nonresident, by, among other ways, being present in the United States for at least 31 days in that calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year. For purposes of this calculation, you would count all of the days present in the current year, one-third of the days present in the immediately preceding year and one-sixth of the days present in the second preceding year. Residents are taxed for U.S. federal income tax purposes as if they were U.S. citizens. If a partnership or other flow-through entity is a beneficial owner of our common stock, the tax treatment of a partner in the partnership or owner of the entity will generally depend on the status of the partner or owner and the activities of the partnership or entity. Such holders and their partners or owners should consult their own tax advisors regarding U.S. federal, state, local and non-U.S. income and other tax consequences of acquiring, holding and disposing of shares of our common stock.

This discussion does not purport to address all aspects of U.S. federal income and estate taxes or specific facts and circumstances that may be relevant to a particular non-U.S. holder's tax position, including:

- U.S. state or local or any non-U.S. tax consequences;
- the tax consequences for the stockholders, partners or beneficiaries of a non-U.S. holder;
- special tax rules that may apply to particular non-U.S. holders, such as financial institutions, insurance companies, tax-exempt organizations, U.S. expatriates, broker-dealers and traders in securities; and special tax rules that may apply to a non-U.S. holder that holds our common stock as part of a "straddle," "hedge," "conversion transaction," "synthetic security" or integrated investment.

The following discussion is based on provisions of the U.S. Internal Revenue Code of 1986, as amended, existing and proposed U.S. Treasury regulations and administrative and judicial interpretations, all as of the date of this prospectus, and all of which are subject to change, possibly with retroactive effect. The following summary assumes that you hold our common stock as a capital asset. **Each non-U.S. holder should consult a tax advisor regarding the U.S. federal, state, local and non-U.S. income and other tax consequences of acquiring, holding and disposing of shares of our common stock.**

Dividends

We do not anticipate paying cash dividends on our common stock in the foreseeable future. See "Dividend Policy." In the event, however, that we pay dividends on our common stock, we will have to withhold a

U.S. federal withholding tax at a rate of 30%, or a lower rate under an applicable income tax treaty, from the gross amount of the dividends paid to you. You should consult your tax advisors regarding your entitlement to benefits under a relevant income tax treaty. Generally, in order for us to withhold tax at a lower treaty rate, you must provide us with a properly executed Form W-8BEN certifying your eligibility for the lower treaty rate. However:

- in the case of common stock held by a foreign partnership, the certification requirement will generally be applied to partners and the partnership will be required to provide certain information;
- in the case of common stock held by a foreign trust, the certification requirement will generally be applied to the trust or the beneficial owners of the trust, depending on whether the trust is a "foreign complex trust," "foreign simple trust" or "foreign grantor trust" as defined in the U.S. Treasury regulations; and
- look-through rules apply for tiered partnerships, foreign simple trusts and foreign grantor trusts.

A non-U.S. holder that is a foreign partnership or a foreign trust is urged to consult its tax advisor regarding its status under these U.S. Treasury regulations and the certification requirements applicable to it.

If you are eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty, you may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the U.S. Internal Revenue Service.

If the dividend is effectively connected with your conduct of a trade or business in the United States and, if an income tax treaty applies, is attributable to a permanent establishment that you maintain in the United States, the dividend will generally be exempt from the U.S. federal withholding tax, provided that you supply us with a properly executed Form W-8ECI. In this case, the dividend will be taxed on a net income basis at the regular graduated rates and in the manner applicable to U.S. persons and, if you are a foreign corporation, you may be subject to an additional branch profits tax at a rate of 30% or a lower rate as may be specified by an applicable income tax treaty.

Gain on Dispositions of Common Stock

You generally will not be subject to U.S. federal income tax on gain recognized on a disposition of our common stock unless:

- the gain is effectively connected with your conduct of a trade or business in the United States and, if an income tax treaty applies, the gain is attributable to a permanent establishment maintained by you in the United States; in this case, the gain will be taxed on a net income basis at the regular graduated rates and in the manner applicable to U.S. persons and, if you are a foreign corporation, you may be subject to an additional branch profits tax at a rate of 30% or a lower rate as may be specified by an applicable income tax treaty;
- you are an individual who is present in the United States for 183 days or more in the taxable year of the disposition and meets other requirements; or
- we are or have been a "U.S. real property holding corporation" for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that you held our common stock; in this case, subject to the discussion below, the gain will be taxed on a net income basis in the manner described in the first bullet paragraph above.

Generally, a corporation is a "U.S. real property holding corporation" if the fair market value of its "U.S. real property interests" equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. The tax relating to stock in a "U.S. real property holding corporation" generally will not apply to a non-U.S. holder whose holdings, direct and

indirect, at all times during the applicable period, constituted 5% or less of our common stock, provided that our common stock was regularly traded on an established securities market. We believe that we are not currently, and we do not anticipate becoming in the future, a "U.S. real property holding corporation" for U.S. federal income tax purposes.

Federal Estate Tax

Common stock owned or treated as owned by an individual who is a non-U.S. holder (as specially defined for U.S. federal estate tax purposes) at the time of death will be included in the individual's gross estate for U.S. federal estate tax purposes, unless an applicable estate tax or other treaty provides otherwise and, therefore, may be subject to U.S. federal estate tax.

Information Reporting and Backup Withholding

Information returns will be filed with the U.S. Internal Revenue Service in connection with payments of dividends and the proceeds from a sale or other disposition of our common stock. Dividends paid to you may be subject to information reporting and U.S. backup withholding. You generally will be exempt from such backup withholding if you provide a properly executed Form W-8BEN or otherwise meet documentary evidence requirements for establishing that you are a non-U.S. holder or otherwise establish an exemption.

The gross proceeds from the disposition of our common stock may be subject to information reporting and backup withholding. If you sell your shares of our common stock outside of the United States through a non-U.S. office of a non-U.S. broker and the sales proceeds are paid to you outside of the United States, then the U.S. backup withholding and information reporting requirements generally (except as provided in the following sentence) will not apply to that payment. However, information reporting, but not backup withholding, will apply to a payment of sales proceeds, even if that payment is made outside of the United States, if you sell our common stock through a non-U.S. office of a broker that:

- is a U.S. person;
- derives 50% or more of its gross income in specific periods from the conduct of a trade or business in the United States;
- is a "controlled foreign corporation" for U.S. tax purposes; or
- is a foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons who in the aggregate hold more than 50% of the income or capital interests in the partnership, or the foreign partnership is engaged in a U.S. trade or business,

unless the broker has documentary evidence in its files that you are a non-U.S. person and various other conditions are met or you otherwise establish exemption.

If you receive payments of the proceeds of a sale of our common stock to or through a U.S. office of a broker, the payment is subject to both U.S. backup withholding and information reporting unless you provide a properly executed Form W-8BEN certifying that you are a non-U.S. person and various other conditions are met or you otherwise establish an exemption.

You generally may obtain a refund of any amount withheld under the backup withholding rules that exceeds your income tax liability by filing a refund claim with the U.S. Internal Revenue Service.

UNDERWRITERS

Under the terms and subject to the conditions contained in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. Incorporated and Lehman Brothers Inc. are acting as representatives and joint book-running managers, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

Name	Number of Shares
Morgan Stanley & Co. Incorporated	
Lehman Brothers Inc.	
Credit Suisse Securities (USA) LLC	
Natexis Bleichroeder Inc.	
Total	

The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the public offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ a share under the public offering price. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to an aggregate of additional shares of common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase approximately the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table. If the underwriters' option is exercised in full, the total price to the public would be $, the total underwriters' discounts and commissions would be $ and the total proceeds to us would be $.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed five percent of the total number of shares of common stock offered by them.

Application has been made to have our common stock listed on the NASDAQ Global Market under the symbol "JAZZ".

We and our directors, executive officers and certain other stockholders have agreed that, without the prior written consent of Morgan Stanley & Co. Incorporated and Lehman Brothers Inc. on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock;

- file any registration statement with the SEC relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock;

whether any such transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise.

The restrictions described in the preceding paragraph do not apply to: the sale of shares by us to the underwriters or the issuance by us of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing, and, in the case of our directors, officers and stockholders, (1) transactions relating to shares of common stock or other securities acquired in open market transactions after the completion of this offering, provided that no filing under Section 16(a) of the Securities and Exchange Act of 1934, as amended, shall be required or shall be voluntarily made in connection with subsequent sales of common stock or other securities acquired in such open market transactions, (2) transfers of shares of common stock or any security convertible into common stock as a bona fide gift, or (3) distributions of shares of common stock or any security convertible into common stock to limited partners or stockholders of such persons; *provided* that in the case of any transfer or distribution pursuant to clause (2) or (3), (a) each donee or distributee shall sign and deliver in respect of shares of common stock and any security convertible into common stock so transferred or distributed, a lock-up agreement substantially in the form of the agreement entered into by our directors and officers and (b) no filing under Section 16(a) of the Securities Exchange Act of 1934, as amended, reporting a reduction in beneficial ownership of shares of common stock, shall be required or shall be voluntarily made during the 180-day restricted period referred to in the preceding paragraph. The 180-day restricted period described in the preceding paragraph will be extended if:

- during the last 17 days of the 180-day restricted period we issue a release regarding earnings or regarding material news or events relating to us; or
- 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 period,

in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the release or the occurrence of the material news or material event; provided, however, that the restrictions described in the preceding paragraph will not extend beyond 214 days after the date of this prospectus.

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. As an additional means of facilitating the offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. The underwriting syndicate may also reclaim selling concessions allowed to an underwriter or a dealer for distributing the common stock in the offering, if the syndicate repurchases previously distributed common stock to cover syndicate short positions or to stabilize the price of the

common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

The underwriters may in the future provide investment banking services to us for which they would receive customary compensation. In addition, entities affiliated with Lehman Brothers Inc. have entered into certain transactions with us, including the acquisition of shares of our capital stock and warrants to purchase shares of our capital stock, as described under "Certain Relationships and Related Party Transactions."

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive, each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Member State it has not made and will not make an offer of shares of common stock to the public in that Member State, except that it may, with effect from and including such date, make an offer of shares of common stock to the public in that Member State:

- at any time to legal entities which are 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;
- at any time to any legal entity which 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; or
- at any time in any other circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of the above, the expression an "offer of shares of common stock to the public" in relation to any shares of common stock in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares of common stock to be offered so as to enable an investor to decide to purchase or subscribe the shares of common stock, as the same 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 that Member State.

Each underwriter has represented and agreed that it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of the common stock in circumstances in which Section 21(1) of such Act does not apply to us and it has complied and will comply with all applicable provisions of such Act with respect to anything done by it in relation to any shares of common stock in, from or otherwise involving the United Kingdom.

Pricing of the Offering

Prior to this offering, there has been no public market for the shares of common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. Among the factors to be considered in determining the initial public offering price will be our future prospects and our industry in general, our sales, earnings and certain other financial operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities and certain financial and operating information of companies engaged in activities similar to ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

LEGAL MATTERS

The validity of the shares of common stock being offered by this prospectus will be passed upon for us by Cooley Godward Kronish LLP, Palo Alto, California. The underwriters are being represented by Davis Polk & Wardwell, Menlo Park, California.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements and schedule at December 31, 2005 and 2006, and for each of the three years in the period ended December 31, 2006, as set forth in their report (which contains an explanatory paragraph describing conditions that raise substantial doubt about our ability to continue as a going concern as described in Note 2 to the consolidated financial statements). We have included our consolidated financial statements and schedule in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

Ernst & Young LLP, independent auditors, has audited the financial statements of Orphan Medical, Inc. for the period from January 1, 2005 to June 24, 2005, as set forth in their report. We have included Orphan Medical, Inc.'s financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act of 1933, as amended, with respect to the shares of common stock being offered by this prospectus. This prospectus does not contain all of the information in the registration statement and its exhibits. For further information with respect to Jazz Pharmaceuticals and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at *http://www.sec.gov*. You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of these documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, as amended, and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available for inspection and copying at the public reference room and web site of the SEC referred to above. We also maintain a website at *http://www.jazzpharmaceuticals.com*, at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information contained in, or that can be accessed through, our website is not part of this prospectus.

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JAZZ PHARMACEUTICALS, INC.

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Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Jazz Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Jazz Pharmaceuticals, Inc. as of December 31, 2005 and 2006, and the related consolidated statements of operations, convertible preferred stock and stockholders' deficit, and cash flows for each of the three years in the period ended December 31, 2006. Our audits also included the financial statement schedule listed in Item 16(b) of this Registration Statement. These financial statements and schedule 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 the 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 Jazz Pharmaceuticals, Inc. at December 31, 2005 and 2006, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2006, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, Jazz Pharmaceuticals Inc.'s recurring losses from operations and cash used in operating activities raise substantial doubt about its ability to continue as a going concern. Management's plans as to these matters also are described in Note 2. The 2006 financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As discussed in Note 2 to the consolidated financial statements, Jazz Pharmaceuticals, Inc. changed its method of accounting for stock-based compensation in accordance with guidance provided in Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment", on January 1, 2006.

/s/ Ernst & Young LLP

Palo Alto, California
March 6, 2007

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	December 31, 2005	December 31, 2006
ASSETS		
Current assets:		
Cash and cash equivalents	$ 20,614	$ 78,948
Restricted cash	300	275
Accounts receivable, net of allowances of $122 and $198 at December 31, 2005 and 2006, respectively	3,597	5,380
Inventories	3,262	3,026
Prepaid expenses	3,240	3,447
Other current assets	371	487
Total current assets	31,384	91,563
Property and equipment, net	1,941	2,107
Intangible assets, net—purchased developed technology	71,023	63,130
Intangible assets, net—other	7,717	6,010
Goodwill	38,883	38,213
Long-term restricted cash and available-for-sale securities	12,000	12,000
Other long-term assets	1,833	1,548
Total assets	$ 164,781	$ 214,571
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Line of credit	$ —	$ 2,191
Accounts payable	4,786	5,443
Accrued liabilities	11,121	12,943
Deferred revenue	—	1,422
Preferred stock warrant liability (including $5,107 and $5,965 as of December 31, 2005 and 2006, respectively, held by related parties)	7,429	8,521
Total current liabilities	23,336	30,520
Liability for early exercise of options and restricted common stock	184	98
Deferred rent	649	436
Non-current portion of deferred revenue	—	13,495
Senior secured notes (including $50,620 and $51,998 as of December 31, 2005 and 2006, respectively, held by related parties)	73,629	74,283
Development financing obligation	15,445	—
Commitments and contingencies (Note 8)		
Convertible preferred stock, $.0001 par value; 308,236,575 authorized at December 31, 2005 and 2006; 125,002,932 and 198,338,205 shares issued and outstanding at December 31, 2005 and 2006, respectively; aggregate liquidation preference of $165,000 and $265,000 at December 31, 2005 and 2006, respectively	163,862	263,852
Common stock subject to repurchase	5,924	8,183
Stockholders' deficit:		
Common stock, $.0001 par value; 252,716,057 shares authorized at December 31, 2005 and 2006; 6,839,171 and 6,905,733 shares issued and outstanding at December 31, 2005 and 2006, respectively; 4,345,209 and 6,002,085 of which are vested and included in common stock subject to repurchase above at December 31, 2005 and 2006, respectively	—	—
Additional paid-in capital	—	1,335
Accumulated other comprehensive income	4	12
Accumulated deficit	(118,252)	(177,643)
Total stockholders' deficit	(118,248)	(176,296)
Total liabilities, convertible preferred stock and stockholders' deficit	$ 164,781	$ 214,571

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

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)

	Year Ended December 31,		
	2004	2005	2006
Revenues:			
Product sales, net	$ —	$ 18,796	$ 43,299
Royalties, net	—	146	594
Contract revenue	—	2,500	963
Total revenues	—	21,442	44,856
Operating expenses:			
Cost of product sales	—	4,292	6,968
Research and development	17,988	45,783	54,956
Selling, general and administrative	7,459	23,551	51,384
Amortization of intangible assets	—	4,960	9,600
Purchased in-process research and development	—	21,300	—
Total operating expenses	25,447	99,886	122,908
Loss from operations	(25,447)	(78,444)	(78,052)
Interest income	643	1,318	2,307
Interest expense (including $4,595 and $9,024 for the years ended December 31, 2005 and 2006, respectively, pertaining to related parties)	—	(7,129)	(14,129)
Other expense	—	(901)	(1,109)
Gain on extinguishment of development financing obligation	—	—	31,592
Net loss	(24,804)	(85,156)	(59,391)
Beneficial conversion feature	—	—	(21,920)
Loss attributable to common stockholders	$(24,804)	$ (85,156)	$ (81,311)
Loss per share attributable to common stockholders, basic and diluted	$(137.80)	$(1,216.51)	$ (572.61)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	180	70	142

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

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(In thousands, except share and per share amounts)

	Convertible Preferred Stock						Common Stock Subject to Repurchase	Stockholders' Deficit					
	Series A		Series B		Series B Prime			Common Stock		Additional Paid-in Capital	Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Amount	Shares	Amount				
Balance at January 1, 2004	7,150,000	$ 7,076	—	$ —	—	$ —	$ —	6,395,000	$ 16	$ —	$ —	$ (2,528)	$ (2,512)
Reincorporation in Delaware and reissuance of common stock with $.0001 par value	—	—	—	—	—	—	—	—	(16)	16	—	—	—
Issuance of common stock subject to repurchase rights for cash	—	—	—	—	—	—	—	444,171	—	230	—	—	230
Transfer of common stock subject to repurchase to temporary equity	—	—	—	—	—	—	1,773	—	—	(21)	—	(1,752)	(1,773)
Vesting of common stock subject to repurchase	—	—	—	—	—	—	1,892	—	—	(24)	—	(1,839)	(1,863)
Repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	—	—	—	—	(201)	—	—	(201)
Issuance of Series A convertible preferred stock net of issuance costs of $0	7,850,000	7,850	—	—	—	—	—	—	—	—	—	—	—
Issuance of Series B convertible preferred stock, net of issuance costs of $441	—	—	17,600,469	23,560	—	—	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock, net of issuance costs of $477	—	—	—	—	19,067,175	25,523	—	—	—	—	—	—	—
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	(24,804)	(24,804)
Balance at December 31, 2004	15,000,000	14,926	17,600,469	23,560	19,067,175	25,523	3,665	6,839,171	—	—	—	(30,923)	(30,923)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	—	—	—	—	53	—	—	53
Vesting of common stock subject to repurchase	—	—	—	—	—	—	2,259	—	—	(53)	—	(2,173)	(2,226)
Issuance of Series B convertible preferred stock, net of issuance costs of $11	—	—	35,200,937	47,989	—	—	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock, net of issuance costs of $136	—	—	—	—	38,134,351	51,864	—	—	—	—	—	—	—
Comprehensive loss:													
Net loss	—	—	—	—	—	—	—	—	—	—	—	(85,156)	(85,156)
Gain on available-for-sale securities	—	—	—	—	—	—	—	—	—	—	4	—	4
Comprehensive loss													(85,152)
Balance at December 31, 2005	15,000,000	14,926	52,801,406	71,549	57,201,526	77,387	5,924	6,839,171	—	—	4	(118,252)	(118,248)

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT—(Continued)
(In thousands, except share and per share amounts)

	Convertible Preferred Stock						Common Stock Subject to Repurchase	Stockholders' Deficit					
	Series A		Series B		Series B Prime			Common Stock		Additional Paid-in Capital	Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Amount	Shares	Amount				
Balance at December 31, 2005	15,000,000	$ 14,926	52,801,406	$ 71,549	57,201,526	$ 77,387	$ 5,924	6,839,171	$ —	$ —	$ 4	$(118,252)	$ (118,248)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	—	—	—	—	53	—	—	53
Vesting of common stock subject to repurchase	—	—	—	—	—	—	2,259	—	—	(2,226)	—	—	(2,226)
Issuance of Series B convertible preferred stock, net of issuance costs of $5	—	—	35,200,924	47,995	—	—	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock, net of issuance costs of $5	—	—	—	—	38,134,349	51,995	—	—	—	—	—	—	—
Issuance of Common stock for cash upon exercise of stock options	—	—	—	—	—	—	—	66,562	—	10	—	—	10
Stock-based compensation	—	—	—	—	—	—	—	—	—	3,498	—	—	3,498
Beneficial conversion feature—deemed dividend on issuance of Series B preferred stock	—	—	—	—	—	—	—	—	—	21,920	—	—	21,920
Beneficial conversion feature	—	—	—	—	—	—	—	—	—	(21,920)	—	—	(21,920)
Comprehensive loss:													
Net loss	—	—	—	—	—	—	—	—	—	—	—	(59,391)	(59,391)
Gain on available-for-sale securities	—	—	—	—	—	—	—	—	—	—	8	—	8
Comprehensive loss													(59,383)
Balance at December 31, 2006	15,000,000	$ 14,926	88,002,330	$119,544	95,335,875	$129,382	$ 8,183	6,905,733	$ —	$ 1,335	$ 12	$(177,643)	$ (176,296)

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

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2004	2005	2006
Operating activities			
Net loss	$(24,804)	$ (85,156)	$ (59,391)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	122	479	710
Amortization of intangible assets	—	4,960	9,600
Loss on disposal of property and equipment	—	—	481
Fair value adjustment to acquired finished goods	—	1,584	775
Purchased in-process research and development	—	21,300	—
Amortization of debt discount and debt issuance costs	—	476	949
Revaluation of preferred stock warrant liability	—	901	1,092
Stock-based compensation expense	—	—	3,480
Interest on development financing obligation	—	445	1,147
Gain on extinguishment of development financing obligation	—	—	(31,592)
Changes in assets and liabilities:			
Restricted cash	150	(175)	25
Accounts receivable	—	(249)	(1,783)
Inventories	—	(219)	(521)
Prepaid expenses and other current assets	(1,915)	1,158	(473)
Other assets	(151)	—	323
Accounts payable	1,564	2,408	657
Accrued liabilities	3,340	(210)	2,492
Deferred revenue	—	—	14,917
Deferred rent	688	(39)	(213)
Net cash used in operating activities	(21,006)	(52,337)	(57,325)
Investing activities			
Purchases of property and equipment	(992)	(1,413)	(1,682)
Proceeds from sale of property and equipment	—	—	150
Purchases of available-for-sale securities	(45,946)	—	(1,705)
Proceeds from sales of available-for-sale securities	40,000	3,450	—
Proceeds from maturities of available-for-sale securities	—	2,500	—
Cash paid for shares of Orphan Medical, Inc., net of cash acquired	—	(146,116)	—
Proceeds from maturities of long-term restricted cash equivalents	—	—	1,705
Increase in long-term restricted cash and investments	—	(12,000)	—
Net cash used in investing activities	(6,938)	(153,579)	(1,532)
Financing activities			
Proceeds from issuances of convertible preferred stock, net of issuance costs	56,933	99,853	99,990
Proceeds from issuances of common stock, net of issuance costs	58	—	10
Proceeds from issuances of common stock with repurchase rights and the early exercise of stock options	171	—	—
Proceeds from line of credit	—	—	3,283
Repayments under line of credit	—	—	(1,092)
Proceeds from sale of senior secured notes, net of issuance costs	—	77,999	—
Proceeds from development financing	—	15,000	15,000
Net cash provided by financing activities	57,162	192,852	117,191
Net increase (decrease) in cash and cash equivalents	29,218	(13,064)	58,334
Cash and cash equivalents, at beginning of period	4,460	33,678	20,614
Cash and cash equivalents, at end of period	$ 33,678	$ 20,614	$ 78,948
Supplemental disclosure of cash flow information:			
Cash paid for interest	$ —	$ 6,200	$ 12,000
Supplemental disclosure of non-cash financing and investing activities:			
Warrants to purchase Series BB convertible preferred stock issued in conjunction with senior secured notes	$ —	$ 6,696	$ —
Beneficial conversion feature	$ —	$ —	$ 21,920

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

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

Jazz Pharmaceuticals, Inc. ("the Company") was incorporated in California in March 2003 and reincorporated in Delaware in January 2004. The Company is a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. The Company's goal is to build a broad portfolio of products through a combination of internal development activities and acquisition and in-licensing opportunities, and to utilize its specialty sales force to promote its products in specific therapeutic markets.

Since its inception, the Company has built a commercial operation and assembled a portfolio that currently includes two marketed products, two product candidates for which new drug applications ("NDAs") have been submitted to the U.S. Food and Drug Administration ("FDA") and five product candidates in various stages of clinical development. The Company also has additional product candidates in early-stage development and feasibility activities. In March 2007, the Company sold its rights to a third marketed product.

2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements include the accounts of Jazz Pharmaceuticals, Inc. and its wholly-owned subsidiary, Orphan Medical, Inc. ("Orphan Medical"), after elimination of intercompany transactions and balances.

Significant Risks and Uncertainties

The Company has incurred significant losses from operations since its inception and expects losses to continue for the next several years. To achieve profitable operations, the Company must successfully identify, develop and commercialize its products. Products developed by the Company will require approval of the FDA or a foreign regulatory authority prior to commercial sales. The regulatory approval process is expensive, time consuming and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company's products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products. The Company will need to raise additional funds to support its operations, and such funding may not be available to it on acceptable terms, or at all. The Company's board of directors has approved the filing of a registration statement on Form S-1 with respect to a proposed initial public offering of its common stock. The Company may seek additional sources of financing through development financings, collaborations or public or private debt or equity financings, and may also seek to reduce expenses related to its operations.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business. The 2006 financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to the Company's ability to continue as a going concern.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts and disclosures reported in the consolidated financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Concentration of Credit Risks and Fair Value of Financial Instruments

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash equivalents, restricted cash, marketable securities and accounts receivable. The Company's investment policy limits investments to certain types of debt securities issued by the U.S. government, its agencies and institutions with investment-grade credit ratings and places restrictions on maturities and concentration by type and issuer. The Company is exposed to credit risk in the event of a default by the financial institutions holding its cash, cash equivalents and marketable securities and issuers of investments to the extent recorded on the balance sheet.

The Company monitors its exposure within accounts receivable and records a reserve against uncollectible accounts receivable as necessary. The Company extends credit to pharmaceutical companies, pharmaceutical wholesale distributors and a specialty pharmaceutical distribution company primarily in the U.S. in the normal course of business. Customer creditworthiness is monitored and collateral is not normally required. Historically, the Company has not experienced significant credit losses on its accounts receivable. The Company's five largest customers accounted for an aggregate of approximately 88% and 90% of gross accounts receivable as of December 31, 2005 and 2006, respectively.

The fair value of financial instruments, including cash, cash equivalents, marketable investments, accounts receivable, accounts payable, accrued liabilities and senior secured notes approximate their carrying value.

Cash Equivalents, Restricted Cash and Available-for-Sale Securities

The Company considers all highly liquid investments, readily convertible to cash, that mature within three months or less from date of purchase to be cash equivalents. Restricted cash and available-for-sale securities consist of cash equivalents and available-for-sale securities, the use of which is restricted either by contract or agreement. At December 31, 2006 the Company held a money market account in the amount of $275,000 as collateral securing a letter of credit. The Company has a $12.0 million investment account which is restricted under the agreement governing the Company's senior secured notes. Available-for-sale securities are investments in debt securities with maturities of less than one year from the balance sheet date, or securities with maturities of greater than one year that are specifically identified to fund current operations. Collectively, cash equivalents, restricted cash and available-for-sale securities are classified as available-for-sale and are recorded at fair value, based on quoted market prices. Unrealized gains and losses, net of tax, are recorded in other comprehensive income and included as a separate component of stockholders' deficit. The Company uses the specific-identification method for calculating realized gains and losses on securities sold. Realized gains and losses and declines in value judged to be other than temporary on available-for-sale securities are included in interest income in the statement of operations. Realized gains and losses on sales of available-for-sale securities have not been material.

Inventories

Inventories are valued at the lower of cost or market. Cost is determined using the first-in, first-out method for all inventories. The Company's policy is to write down inventory that has become obsolete, inventory that has a cost basis in excess of its expected net realizable value and inventory in excess of expected requirements.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are amortized over the shorter of the noncancelable term of the Company's operating lease or their economic useful lives. Maintenance and repairs are charged to operations as incurred.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Goodwill and Intangible and Long-Lived Assets

Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed. The Company has determined that it operates in a single segment and has a single reporting unit associated with the development and commercialization of pharmaceutical products. The annual test for goodwill impairment is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step indicates an impairment, then the loss is measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of the fair value of the reporting unit over the fair value of all identified assets and liabilities. Management tests goodwill for impairment annually in October and concluded that no impairment existed as of October 1, 2006. Management will also test for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. There have been no changes since October 1, 2006 that would cause management to reevaluate its conclusion.

Intangible assets consist primarily of purchased developed technology, agreements not to compete and trademarks. Intangible assets are amortized on a straight-line basis over their estimated useful lives, which range from three to ten years. The estimated useful lives associated with intangible assets are consistent with underlying agreements, or the estimated lives of the products. Once an intangible asset is fully amortized, the gross costs and accumulated amortization are removed from the consolidated balance sheet. The Company evaluates purchased intangibles and other long-lived assets, other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. The amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value, calculated using discounted cash flows. Since the Company's inception, there has been no such impairment loss recognized.

Preferred Stock Warrant Liability

Effective July 1, 2005, the Company adopted the provisions of Financial Accounting Standards Board ("FASB") Staff Position ("FSP") No. 150-5, *Issuer's Accounting under Statement No. 150 for Freestanding Warrants and Other Similar Instruments on Shares that are Redeemable* ("FSP 150-5"), an interpretation of FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*. Pursuant to FSP 150-5, freestanding warrants for shares that are puttable, or warrants for shares that are redeemable are classified as liabilities on the consolidated balance sheet at fair value. At the end of each reporting period, changes in fair value during the period are recorded as other expense.

Upon adoption of FSP 150-5, the Company reclassified the fair value of its warrants to purchase shares of convertible preferred stock from equity to a liability. There was no cumulative effect on adoption. The Company recorded other expense of $901,000 and $1.1 million during the years ended December 31, 2005 and 2006, respectively, to reflect the increase in the fair value of the warrants. The Company will continue to adjust the preferred stock warrant liability for changes in the fair value of the warrants until the earlier of the exercise of the warrants, at which time the liability will be reclassified to temporary equity, or the conversion of the underlying convertible preferred stock issuable into common stock, at which time the liability will be reclassified to stockholders' deficit.

Deferred Rent

The Company recognizes rent expense on a straight-line basis over the noncancelable term of its operating lease and, accordingly, records the difference between cash rent payments and the recognition of rent expense as a deferred rent liability. The Company also records landlord-funded lease incentives, such as reimbursable leasehold improvements, as a deferred rent liability which is amortized as a reduction of rent expense over the noncancelable terms of its operating lease.

Revenue Recognition

Revenues are recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable and collection is reasonably assured. In evaluating arrangements with multiple elements the Company considers whether components of the arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. This evaluation requires subjective determinations and requires management to make judgments about the fair value of individual elements and whether such elements are separable from other aspects of the contractual relationship. The consideration received in such arrangements is allocated among the separate units of accounting based on their respective fair values when there is reliable evidence of fair value for all elements of the arrangement. If there is no evidence of fair value for all the elements of the arrangement consideration is allocated based on the residual value method for the delivered elements. Under the residual method, the amount of revenues allocated to the delivered elements equals the total arrangement consideration less the aggregate fair value of any undelivered elements. The applicable revenue recognition criteria are applied to each of the separate units. Payments received in advance of work performed are recorded as deferred revenues and recognized when earned.

Product Sales, Net

Revenues from sales of Xyrem within the U.S. are recognized upon transfer of title, which occurs when the Company's specialty pharmaceutical distributor removes product from the Company's consigned inventory location at its facility for shipment to a patient. Antizol is, and prior to our sale of the Company's rights Cystadane was, shipped to the Company's wholesaler customers in the U.S. with free on board destination shipping terms, and the Company recognizes revenues when delivery occurs. The Company's international sales often have customer acceptance clauses and therefore the Company recognizes revenues when it is notified of acceptance or the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, the Company recognizes revenues when title transfers, which is generally when the product leaves the Company's logistics provider's facilities.

Revenues from sales of products within the U.S. are recorded net of estimated allowances for prompt payment discounts, wholesaler and specialty distributor fees, government chargebacks and rebates. Significant judgment is inherent in the selection of assumptions and in the interpretation of historical experience, as well as the identification of external and internal factors affecting the estimates. Because Xyrem is sold to one distributor in the United States, allowances and adjustments to estimates for allowances have not historically been material.

Royalties, Net

The Company receives royalties from third parties based on sales of its products under out-licensing and distributor arrangements. For those arrangements where royalties are reasonably estimable, the Company recognizes revenues based on estimates of royalties earned during the applicable period, and adjusts for differences between the estimated and actual royalties in the following quarter. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, the Company recognizes revenues upon receipt of royalty statements from the licensee or distributor.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Contract Revenues

Nonrefundable fees where the Company has no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where the Company has continuing performance obligations, nonrefundable fees are deferred and recognized ratably over the performance period. The Company recognizes at-risk milestone payments, which are typically related to regulatory, commercial or other achievements by the Company or its licensees and distributors, as revenues when the milestone is accomplished and collection is reasonably assured. Refundable fees are deferred and recognized as revenues upon the later of when they become nonrefundable or when performance obligations are completed.

Cost of Product Sales and Concentrations of Supply Risk

Cost of product sales includes third party manufacturing and distribution costs, the cost of drug substance, royalties due to third parties on product sales, product liability insurance, FDA user fees, freight, shipping, handling and storage costs, and salaries and related costs of employees involved with production. The Company's product exchange policy for Antizol allows and, prior to our sale of our rights to Cystadane, our product exchange policy for Cystadane allowed, customers to return expired product for exchange up to six months before or after the product's expiration date. These expiration date returns are exchanged for replacement product, and the estimated cost of such exchanges is included in cost of product sales. Amounts accrued for replacement product have not been material to date. In addition, as part of the acquisition of Orphan Medical, the Company recorded finished goods on-hand at the acquisition date at fair value, which is defined as inventory valued at estimated selling prices less the sum of (a) costs of disposal and (b) reasonable profit allowance for the selling effort of the acquiring entity. The fair value of inventory acquired is recorded as cost of product sales when the related product revenues are recorded.

The Company relies on certain sole suppliers for drug substance and certain sole manufacturing partners for each of its marketed products and certain of its product candidates. The Company attempts to mitigate this risk by establishing contractual relationships where appropriate.

Research and Development

The Company's research and development expenses consist of expenses incurred in identifying, developing and testing its product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist us in managing, monitoring and analyzing our clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical studies, fees paid to third parties for development candidates or drug delivery or formulation technologies that the Company has licensed, allocated expenses, such as facilities and information technology that support the Company's research and development activities, and related personnel expenses, including stock-based compensation. Research and development costs are expensed as incurred, including payments made under the Company's license agreements. For products that have not been approved by the FDA, inventory used in clinical trials is expensed at the time of production and recorded as research and development expense. For products that have been approved by the FDA, inventory used in clinical trials is expensed at the time the inventory is packaged for the trial and therefore is not included in inventory.

In-Process Research and Development

In connection with the acquisition of Orphan Medical, the Company recorded a charge of $21.3 million for acquired in-process research and development during the year ended December 31, 2005. This amount

represented the estimated fair value related to three incomplete product candidate development projects for which, at the time of the acquisition, technological feasibility had not been established and there was no alternative future use.

Advertising Expenses

The Company expenses the costs of advertising, including promotional expenses, as incurred. Advertising expenses for the years ended December 31, 2004, 2005 and 2006 were zero, $551,000, and $2.3 million, respectively.

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 the tax bases of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

Comprehensive Loss

Comprehensive loss includes net loss and all changes in stockholders' deficit during a period, except for those changes resulting from investments by stockholders or distributions to stockholders. For the years ended December 31, 2005 and 2006, the difference between comprehensive loss and net loss represented unrealized gains on available-for-sale securities. For the year ended December 31, 2004, comprehensive loss was equal to the net loss.

Loss Per Common Share

Basic and diluted loss per common share is computed using the weighted average number of shares of common stock outstanding during the period. Potentially dilutive securities consisting of convertible preferred stock, stock options, common stock subject to repurchase and warrants were not included in the diluted loss per share attributable to common stockholders for all periods presented because the inclusion of such shares would have had an antidilutive effect.

	Year Ended December 31,		
	2004	2005	2006
	(In thousands, except per share data)		
Numerator:			
Loss attributable to common stockholders	$(24,804)	$ (85,156)	$(81,311)
Denominator:			
Weighted-average common shares outstanding	6,724	6,839	6,857
Less: weighted-average common shares outstanding subject to repurchase	(6,544)	(6,769)	(6,715)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	180	70	142
Loss per share attributable to common stockholders, basic and diluted	$(137.80)	$(1,216.51)	$(572.61)

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

	Year Ended December 31,		
	2004	2005	2006
Series A convertible preferred stock (as if converted)	15,000	15,000	15,000
Series B convertible preferred stock (as if converted)	17,600	52,801	88,002
Series B Prime convertible preferred stock (as if converted)	19,067	57,202	95,336
Warrants to purchase Series BB convertible preferred stock (as if exercised and converted)	—	8,696	8,696
Options to purchase common stock	14,133	16,128	17,678
Common stock subject to repurchase	4,107	2,397	688

Stock-Based Compensation

Prior to January 1, 2006, the Company accounted for stock-based employee compensation arrangements using the intrinsic value method of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25") and related interpretations, and complied with the disclosure-only provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, ("SFAS 123") as amended by SFAS No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure, an amendment to SFAS Statement No. 123* ("SFAS 148"). Under APB 25 compensation expense for employees is based on the excess, if any, of the fair value of the Company's common stock over the exercise price of the option on the date of grant. No stock-based compensation expense was recorded under APB 25 during the years ended December 31, 2004 and 2005.

Effective January 1, 2006, the Company adopted SFAS No. 123(R), *Share-Based Payment* ("SFAS 123R"), which requires compensation expense related to share-based transactions, including employee stock options, to be measured and recognized in the financial statements based on fair value. SFAS 123R revises SFAS 123, as amended, and supersedes APB 25. The Company adopted SFAS 123R using a modified version of prospective application. Under modified prospective application, SFAS 123R applies to new awards and to awards modified, repurchased, or cancelled after the required effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered that are outstanding as of the required effective date are recognized as the requisite service is rendered on or after the required effective date. The compensation expense for that portion of awards is based on the grant-date fair value of those awards. The compensation expense for awards with grant dates prior to January 1, 2006, are attributed to periods beginning on or after the effective date using the attribution method that was used under SFAS 123, except that the method of recognizing forfeitures only as they occur is not continued.

The Company is using the straight-line method to allocate compensation cost to reporting periods under SFAS 123 and SFAS 123R for stock options granted during each of the three years ended December 31, 2006.

Beneficial Conversion Feature—Series B Preferred Stock and Series B Prime Preferred Stock

The Company accounts for potentially beneficial conversion features under EITF Issue No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* ("EITF 98-5") and EITF Issue No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*. Issuances of convertible preferred stock during the year ended December 31, 2006 were deemed to result in a beneficial conversion feature calculated in accordance with EITF 98-5. For additional information regarding this beneficial conversion feature, see Note 12.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Reclassifications

Certain reclassifications have been made to the prior year amounts in order to conform to the current year presentation. Convertible preferred stock, which in prior year financial statements had been classified as part of stockholders' deficit, is now classified as temporary equity in accordance with EITF Topic D-98, *Classification and Measurement of Redeemable Securities*. Previously the Company had recorded the original purchase price of unvested shares of common stock subject to a right of repurchase by the Company as a liability and reclassified amounts to stockholders' deficit at the original purchase price as these shares vested. In the financial statements as reclassified, all vested shares of common stock subject to repurchase held by the Company's executive officers have been classified as temporary equity at fair value as of the date the Company entered into certain executive employment agreements. Certain payments to a customer for services performed, which had previously been classified as part of selling, general and administrative expense, have been reclassified as a reduction of revenue. These reclassifications did not impact previously reported net loss.

Recent Accounting Pronouncements

In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006 and is required to be adopted by the Company effective January 1, 2007. The cumulative effects, if any, of applying FIN 48 will be recorded as an adjustment to accumulated deficit as of the beginning of the period of adoption. The Company is currently evaluating the effect that the adoption of FIN 48 will have on its results of operations and financial position.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* ("SAB 108"). SAB 108 provides guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. SAB 108 establishes an approach that requires quantification of financial statement errors based on the effects on each of the Company's balance sheets and statement of operations and the related financial statement disclosures. SAB 108 will be adopted by the Company in the first quarter of 2007. The Company is currently evaluating the effect that the adoption of SAB 108 will have on its results of operations and financial position.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 provides guidance for using fair value to measure assets and liabilities. It also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value, and does not expand the use of fair value in any new circumstances. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and is required to be adopted by the Company effective January 1, 2008. The Company is currently evaluating the effect that the adoption of SFAS 157 will have on its results of operations and financial position.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

3. Cash, Cash Equivalents, Restricted Cash and Available-For-Sale Securities

Cash, cash equivalents, restricted cash and available-for-sale securities, all of which are classified as available-for-sale securities, consisted of the following as of December 31, 2005 and 2006 (in thousands):

	December 31, 2005			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash	$ 5,189	$ —	$ —	$ 5,189
Obligations of U.S. government agencies	15,484	2	—	15,486
Corporate debt securities	7,578	2	—	7,580
Other debt securities, primarily money market funds	4,659	—	—	4,659
Total available-for-sale securities	$ 32,910	$ 4	$ —	$ 32,914
Amounts classified as cash and cash equivalents				$ 20,614
Amounts classified as restricted cash				300
Amounts classified as long-term restricted cash and available-for-sale securities				12,000
Total				$ 32,914

	December 31, 2006			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash	$ 11,799	$ —	$ —	$ 11,799
Obligations of U.S. government agencies	35,106	10	—	35,116
Corporate debt securities	17,180	2	—	17,182
Other debt securities, primarily money market funds	27,126	—	—	27,126
Total available-for-sale securities	$ 91,211	$ 12	$ —	$ 91,223
Amounts classified as cash and cash equivalents				$ 78,948
Amounts classified as restricted cash				275
Amounts classified as long-term restricted cash and available-for-sale securities				12,000
Total				$ 91,223

All available-for-sale securities held as of December 31, 2005 and 2006 had contractual maturities of less than one year.

Since inception, there have been no material realized gains or losses on available-for-sale securities. No available-for-sale securities held as of December 31, 2005 or 2006 had been in a continuous unrealized loss position for more than 12 months. The aggregate fair value of available-for-sale securities held at December 31, 2005 and 2006 which had unrealized losses was $1.5 million and $1.6 million, respectively. The amount of the unrealized loss at December 31, 2005 and 2006 was immaterial and the Company does not believe that the impairment is other than temporary.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Certain Balance Sheet Items

Inventories consist of the following (in thousands):

	December 31, 2005	December 31, 2006
Raw materials	$1,109	$ 541
Finished goods	2,153	2,485
Total inventories	$3,262	$3,026

Property and equipment consist of the following (in thousands):

	December 31, 2005	December 31, 2006
Leasehold improvements	$ 616	$ 700
Computer equipment	707	873
Computer software	558	1,271
Furniture and fixtures	160	182
Construction-in-progress	506	316
Total	2,547	3,342
Less accumulated depreciation and amortization	(606)	(1,235)
Property and equipment, net	$1,941	$ 2,107

Accrued liabilities consists of the following (in thousands):

	December 31, 2005	December 31, 2006
Accrued research and development expense	$ 4,166	$ 5,119
Accrued compensation	3,329	4,322
Accrued sales and marketing expense	2,231	783
Accrued general and administrative expense	365	1,440
Other	1,030	1,279
Total accrued liabilities	$11,121	$ 12,943

5. Acquisition of Orphan Medical

On June 24, 2005, the Company acquired Orphan Medical, a developer and marketer of orphan drug products, primarily to establish a commercial presence through a specialty pharmaceutical sales organization focused on neurologists and psychiatrists. Orphan Medical marketed and sold three products and was conducting clinical trials in order to expand the potential use of one of those products to additional indications. The acquisition was accounted for as a business combination using the purchase method of accounting. Accordingly, the results of Orphan Medical are included in the Company's consolidated financial statements since the date of acquisition.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The purchase price was comprised of cash consideration (net of cash acquired) of $145.4 million plus direct acquisition costs of $750,000 and was allocated to the assets purchased and liabilities assumed based upon their respective fair values as follows (in thousands):

Accounts receivable	$ 3,348
Inventories	4,717
Other current assets	2,714
Noncurrent assets	112
Liabilities	(7,988)
Intangible assets	83,700
Goodwill	38,213
In-process research and development	21,300
Total fair value of assets acquired, net of liabilities assumed	$146,116

Liabilities of $8.0 million as shown above included $4.0 million of restructuring charges related primarily to employee severance payments and the closure of facilities, of which no amounts remained unpaid as of December 31, 2006.

The Company retained an independent appraisal firm to assist in the valuation of identifiable intangible assets acquired in the transaction. The estimated fair value of intangible assets identified and the useful lives assigned at the time of acquisition are as follows (in thousands):

	Gross Carrying Amount	Weighted-Average Estimated Useful Life (Years)
Developed technology	$75,100	9.5
Agreements not to compete	5,600	4.4
Trademarks	2,600	9.5
Other	400	4.5
Amortized intangible assets	$83,700	9.1

During the year ended December 31, 2005, the Company recorded a charge of $21.3 million for acquired in-process research and development. This amount represented the estimated fair value related to three incomplete product candidate development projects for which technological feasibility had not been established and that had no alternative future use at the time of acquisition. This charge is not deductible for federal tax purposes. The fair value of the in-process research and development was determined using the “income approach.” This method requires a forecast of all the expected future net cash flows associated with the in-process technology discounted to present value by applying an appropriate discount rate. The discount rate used reflects the weighted-average cost of capital for companies in the Company’s industry, as well as specific risks associated with the cash flows being discounted.

In January 2005, Orphan Medical submitted a supplemental New Drug Application, or sNDA, to the FDA seeking an expanded label indication for Xyrem. At the time of acquisition, the FDA had not yet approved the sNDA. As a result, the Company charged the value associated with the additional label indication to in-process research and development, which accounted for 71% of the total in-process research and development expense recorded in connection with the acquisition. The discount rate used to calculate the fair value of Xyrem for the new indication, excessive daytime sleepiness in patients with narcolepsy, was 26%. At the time of acquisition,

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Orphan Medical was also conducting a Phase II clinical trial to evaluate the use of sodium oxybate, the active pharmaceutical ingredient ("API") in Xyrem, to treat fibromyalgia syndrome ("FMS"). The discount rate used to calculate the fair value of this development project was 50%. Positive results for the Phase II trial were determined when the trial was unblinded in August 2005. In August 2006 the Company initiated a Phase III clinical trial to evaluate the use of sodium oxybate for the treatment of FMS.

The excess of the purchase price over the fair value of the net tangible and identifiable intangible assets was recorded as goodwill. The primary factors contributing to the existence of goodwill relate to Orphan Medical's sales force and commercial infrastructure. During the year ended December 31, 2006 the Company finalized its estimates of the assets acquired and liabilities assumed and recorded a decrease in goodwill of $670,000. The total amount of goodwill recorded in connection with the acquisition was $38.2 million, none of which will be deductible for federal tax purposes.

In March 2007, the Company sold its rights to Cystadane, a product acquired in connection with the acquisition of Orphan Medical. See Note 19 for a further discussion of this transaction.

The following unaudited pro forma information presents the results of continuing operations and net income of Jazz Pharmaceuticals and Orphan Medical for the years ended December 31, 2004 and 2005 as if the acquisition of Orphan Medical had been consummated as of January 1, 2004 and 2005, respectively. The pro forma results exclude the nonrecurring charge for purchased in-process research and development that resulted directly from the June 24, 2005 acquisition of Orphan Medical by the Company. The unaudited pro forma condensed combined financial information does not reflect any incremental direct costs, including any restructuring charges to be recorded in connection with the acquisition, or any potential cost savings that may result from the consolidation of certain operations of the Company and Orphan Medical. Accordingly, the unaudited pro forma financial information is presented for illustrative purposes and not necessarily indicative of the results of operations of the combined company that would have occurred had the acquisition occurred at the beginning of each period presented, nor is it necessarily indicative of future operating results. The unaudited pro forma information is as follows (in thousands, except per share data):

	Year Ended December 31,	
	2004	2005
Revenues	$ 23,768	$ 37,275
Net loss	(60,318)	(77,643)
Loss per common share	$(335.10)	$(1,111.13)

6. Goodwill and Intangible Assets

The gross carrying amount and net book value of goodwill and intangible assets is as follows (in thousands):

	December 31, 2005			December 31, 2006		
	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Developed technology	$ 75,100	$ 4,077	$71,023	$ 75,100	$ 11,970	$63,130
Agreements not to compete	5,600	696	4,904	5,600	2,042	3,558
Trademarks	2,600	141	2,459	2,600	414	2,186
Other	400	46	354	400	134	266
Amortizable intangible assets	83,700	4,960	78,740	83,700	14,560	69,140
Goodwill	38,883			38,213		
Total	$ 122,583			$ 121,913		

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Future amortization costs per year for the Company's existing intangible assets other than goodwill are estimated as follows (in thousands):

Year Ended December 31,	Estimated Amortization Expense
2007	$ 9,600
2008	9,307
2009	9,033
2010	8,542
2011	8,164

7. Debt and Financing Obligations

Line of Credit

In September 2006, the Company entered into a one year line of credit agreement with a financial institution under which the Company may borrow up to 80% of eligible receivables up to a maximum borrowing limit of $5.0 million. Borrowings under the line of credit bear interest at the lender's prime rate. The Company is subject to certain financial and operating covenants under the credit agreement. The lender has a security interest in all of the Company's assets, with the exception of intellectual property. As of December 31, 2006, $2.2 million was outstanding under the line of credit with interest accruing at a rate of 8.25% per year.

Senior Secured Notes

In order to partially finance the acquisition of Orphan Medical, a wholly-owned subsidiary of the Company issued $80.0 million aggregate principal amount of senior secured notes (the "notes") and warrants to purchase 8,695,652 shares of the Company's Series BB preferred stock exercisable at $1.84 per share (the "warrants") to certain third parties, some of whom are affiliated with preferred stock investors in June 2005. The notes accrue interest at a rate of 15% per annum, payable quarterly in arrears. The principal on the notes is due in full on June 24, 2011 and can be repaid by the Company at any time, at certain premiums over the principal amount.

The Company estimated the fair value of the warrants to be $6.7 million using the Black-Scholes option pricing model with the following assumptions at the time of issuance: risk free interest rate of 3.96%, volatility of 60%, dividend yield of 0.0%, and an expected life of seven years. For additional information on the determination of fair value for the warrants as of December 31, 2005 and 2006, see Note 11. The discount to the notes is being accreted to zero over the life of the notes using the effective interest rate method and is included as a component of interest expense. Total issuance costs of $2.0 million were allocated to the notes and the warrants based on their relative fair values. Of the total issuance costs, $1.8 million was allocated to the notes and included in other assets and is being amortized to interest expense using the effective interest method.

The Company and all existing and future domestic subsidiaries fully and unconditionally guarantee repayment of the notes. The notes and each guarantee are secured by a lien and security interest in substantially all of the Company's and each subsidiary's assets. The subsidiary of the Company that issued the notes is required to maintain a minimum cash balance equal to 15% of the outstanding principal amount on the notes. This amount was $12.0 million at December 31, 2005 and 2006 and is reflected as long-term restricted cash and investments on the Company's consolidated balance sheet. The notes contain customary covenants including limitations on the Company's ability to pay dividends, make investments or other restricted payments, incur debt,

grant liens, sell assets and enter into sale-leaseback transactions. Upon the occurrence of certain events of default under the notes, including a default by the Company in payment of principal or interest on the notes, a bankruptcy filing by the Company, or a change in control of the Company, the Company may be required to repay the notes at a premium. The repayment premium was 30.0% of the principal amount of the notes as of December 31, 2006 and is reduced to zero ratably over the term of the notes.

Development Financing Obligation

In August 2005, the Company entered into an agreement pursuant to which a third party agreed to provide $30.0 million to partially fund a Phase III clinical trial of a product candidate in development in exchange for the Company's agreement to repay the third party $37.5 million subject to, and conditional upon, approval by the FDA to market the product in the U.S. In addition, the Company agreed to pay royalties at specified rates based on sales of the product within the U.S. The Company received $15.0 million in 2005 and $15.0 million in 2006 under the agreement. In June 2006, following analysis of the results of the Phase III clinical trial, the Company notified the third party of its intention to discontinue development of the product candidate. As a result, the Company recorded a gain of $31.6 million resulting from the extinguishment of liabilities related to this transaction, which represented principal and interest accrued as of the date notice that development would be discontinued was provided to the third party. Prior to this extinguishment of liabilities, the Company had recorded interest of $445,000 and $1.1 million during the years ended December 31, 2005 and 2006, respectively, using the effective interest method.

8. Commitments and Contingencies

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnification, including indemnification associated with product liability or infringement of intellectual property rights. The Company's exposure under these agreements is unknown because it involves future claims that may be made against the Company that may be, but have not yet been, made. To date, the Company has not paid any claims or been required to defend any action related to these indemnification obligations except as set forth in the description of legal proceedings below.

The Company has agreed to indemnify its officers and directors and the officers and directors of Orphan Medical for losses and costs incurred in connection with certain events or occurrences, including advancing money to cover certain costs, subject to certain limitations. The maximum potential amount of future payments the Company could be required to make under this indemnification is unlimited; however, the Company maintains insurance policies that may limit its exposure and may enable it to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits and other policy provisions, the Company believes the fair value of these indemnification obligations is not material. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2005 and 2006. No assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case the Company may incur substantial liabilities as a result of these indemnification obligations.

Lease and Other Commitments

In June 2004, the Company entered into a noncancelable operating lease for an office facility in Palo Alto, California which expires in August 2008. The lease is renewable through 2017 at the Company's option. In

addition to these lease payments, the Company is obligated to pay for operating expenses for the leased property. The Company is also obligated to make payments under noncancelable operating leases for cars used by its sales force. Rent expense under all operating leases was $435,000, $930,000 and $1.3 million for the years ended December 31, 2004, 2005 and 2006, respectively. Future minimum lease payments under the Company's noncancelable operating leases at December 31, 2006, are as follows (in thousands):

Year ended December 31,	Lease Payments
2007	$ 1,227
2008	929
2009	238
2010	17
Total future minimum lease payments	$ 2,411

The Company uses third party contract manufacturers to manufacture products. As of December 31, 2006, the Company had $1.5 million of noncancelable purchase commitments under agreements with contract manufacturers due in 2007.

Legal Proceedings

In April 2006, a physician who was a speaker for Orphan Medical (and for a short time for the Company), was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment alleges that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. Also in April 2006, the Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, issued to the Company and Orphan Medical subpoenas for documents relating to Xyrem. The Company is cooperating with this investigation and has provided documents to the U.S. Attorney's Office. As a result of the Company's acquisition of Orphan Medical, the Government may seek to hold the Company responsible for Orphan Medical's conduct. The Company has been in discussions with the U.S. Attorney's Office regarding the possible settlement of any potential government claims against Orphan Medical and/or the Company. It is currently unknown if any such settlement will be reached on reasonable terms, or at all. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome. Therefore, in accordance with Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies* ("SFAS 5"), the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

On April 10, 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against Orphan Medical and former officers of Orphan Medical in the U.S. District Court for the District of Minnesota. The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by Orphan Medical in connection with the solicitation of proxies to be voted at the special meeting of Orphan Medical stockholders held on June 22, 2005 for the purpose of considering and voting upon a proposal to adopt the definitive merger agreement pursuant to which the Company acquired Orphan Medical. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the U.S. District Court for the District of Minnesota. On February 16, 2007, the U.S. District Court for the District of Minnesota granted the defendants'

motion to dismiss the complaint, but granted the plaintiff a one-month leave to amend the plaintiff's complaint. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any judgments or payments that might result from an adverse outcome. Therefore, in accordance with SFAS 5 the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

From time to time the Company is involved in legal proceedings arising in the ordinary course of business. The Company believes there is no other litigation pending that could have, individually or in the aggregate, a material adverse effect on the Company's results of operations or financial condition.

9. Collaboration and License Agreements

In October 2004, the Company entered into an agreement with GlaxoSmithKline to purchase worldwide rights to the API in JZP-4. The Company paid and recorded research and development expense of $2.0 million upon execution of the agreement and $3.0 million in July 2006 upon achievement of a developmental milestone. The Company also agreed to pay up to $113.5 million upon the achievement of future developmental and commercial milestones and royalties at specified rates based on net sales.

The Company paid and expensed as research and development $3.0 million and $10.4 million during the years ended December 31, 2004 and 2005, respectively, upon achievement of developmental milestones under the terms of three agreements which have since been terminated and under which no future obligations existed at December 31, 2006. In connection with its product development activities, the Company may enter into agreements with third party technology providers, patent holders and others. Patent licenses may require upfront payments, patent prosecution and maintenance fees and royalties on sales of products covered by the patents. Agreements with technology providers often provide for upfront payments and milestone payments based upon the achievement of specified developmental and commercial milestones and royalties based on sales of the products the Company develops with the technology provider. The Company currently has two such agreements pursuant to which it has agreed to pay up to $8.2 million upon achievement of developmental and commercial milestones.

10. Product License

In June 2006, the Company entered into an agreement with UCB Pharma Limited ("UCB") that amended and restated a prior agreement between Orphan Medical and UCB. Under the terms of the amended agreement, UCB has the right to market Xyrem for the treatment of narcolepsy and JZP-6 for the treatment of FMS in 54 countries outside of the U.S. Under the prior agreement UCB made a nonrefundable development milestone payment of $2.5 million in November 2005 and a nonrefundable commercial milestone payment of $500,000 in June 2006 which the Company recognized upon achievement of the milestones. UCB also made upfront payments of $5.0 million upon execution of the amended agreement in June 2006 and $10.0 million in August 2006 upon exercise of its rights to develop and commercialize JZP-6 for the treatment of FMS. The Company recognized revenues of $463,000 related to these upfront payments during the year ended December 31, 2006. The remaining $14.5 million was recorded as deferred revenues as of December 31, 2006 and is being recognized ratably through 2019, the expected performance period under the agreement. The amended agreement requires UCB to make additional milestone payments of up to $148.0 million, of which up to $8.0 million relate specifically to Xyrem for the treatment of narcolepsy, up to $40.0 million relate to the development and approval of JZP-6 for the treatment of FMS and up to $100.0 million relate primarily to the commercialization of JZP-6 for the treatment of FMS as well as additional sales of Xyrem for the treatment of narcolepsy.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

11. Convertible Preferred Stock Warrant Liability

In June 2005 in connection with the issuance of the notes referenced in Note 7, the Company issued warrants to purchase 8,695,652 shares of Series BB preferred stock at an exercise price of $1.84 per share. The warrants are exercisable, at the option of the holders, at any time until June 24, 2012, and are recorded as preferred stock warrant liability. The warrants may be exercised using the net exercise method. Under this method, the number of shares issued upon exercise is reduced by an amount equal to the product of the number of shares subject to the exercise and the exercise price per share, divided by the fair value of the Series BB preferred stock on the date of the exercise. The number of shares issuable upon exercise of the warrants, and the exercise price per share, are adjustable in the event of stock splits, dividends and similar fundamental changes. The preferred stock warrant liability is revalued at the end of each reporting period to fair value using the Black-Scholes option pricing model to determine the fair value of the warrants. The fair value of the warrants was estimated to be $7.4 million and $8.5 million as of December 31, 2005 and 2006, respectively, using the following assumptions:

	December 31,	
	2005	2006
Series BB preferred stock fair value	$ 1.50	$ 1.75
Volatility	60%	59%
Contractual term	6.5	5.5
Risk-free rate	4.3%	4.7%
Expected dividend yield	0.0%	0.0%

The Company recorded other expense of $901,000 and $1.1 million during the years ended December 31, 2005 and 2006, respectively, to reflect increases in the fair value of the preferred stock warrant liability. The Company will continue to adjust the preferred stock warrant liability for changes in the fair value of the warrants until the earlier of the exercise of the warrants to purchase Series BB preferred stock, at which time the liability will be reclassified to temporary equity, or the conversion of the underlying Series BB preferred stock into common stock, at which time the liability will be reclassified to stockholders' deficit.

12. Convertible Preferred Stock

The Company's Second Amended and Restated Certificate of Incorporation authorizes the Company to issue shares of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock and Series BB preferred stock, which hereinafter are collectively referred to as preferred stock.

As of December 31, 2005, the preferred stock is comprised of the following (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Carrying Amount	Aggregate Liquidation Preference
Series A	15,000,000	15,000,000	$ 14,926	$ 15,000
Series B	189,205,047	52,801,406	71,549	72,000
Series B Prime	95,335,876	57,201,526	77,387	78,000
Series BB	8,695,652	—	—	—
Total	308,236,575	125,002,932	$ 163,862	$ 165,000

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As of December 31, 2006, the preferred stock is comprised of the following (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Carrying Amount	Aggregate Liquidation Preference
Series A	15,000,000	15,000,000	$ 14,926	$ 15,000
Series B	189,205,047	88,002,330	119,544	120,000
Series B Prime	95,335,876	95,335,875	129,382	130,000
Series BB	8,695,652	—	—	—
Total	308,236,575	198,338,205	$ 263,852	$ 265,000

The Company initially recorded the preferred stock at their fair values on the dates of issuance, net of issuance costs. A redemption event will only occur upon a liquidation or winding up of the Company or a change of control as defined in the Company's Second Amended and Restated Certificate of Incorporation. All shares of preferred stock have been presented outside of permanent equity in accordance with EITF Topic D-98, *Classification and Measurement of Redeemable Securities*. The Company has elected not to adjust the carrying values of the preferred stock to their redemption value since it is uncertain whether or when a redemption event will occur. Subsequent adjustments to increase the carrying values to the redemption values will be made when it becomes probable that such redemption will occur.

As of December 31, 2006, the Company has reserved 95,335,876 shares of Series B preferred stock for conversion of the Series B Prime preferred stock.

In January and December 2006, the Company issued 35,200,924 and 38,134,349 shares, respectively, of Series B preferred stock and Series B Prime preferred stock at a purchase price of $1.3636 per share. At the time of each of these issuances, the value of the common stock into which the Series B preferred stock and Series B Prime preferred stock is convertible had a fair value greater than the proceeds for such issuances. Accordingly, the Company recorded a deemed dividend on the Series B preferred stock and Series B Prime preferred stock of $3.5 million in January 2006 and $18.4 million in December 2006, which equals the amount by which the estimated fair value of the common stock issuable upon conversion of the issued Series B preferred stock and Series B Prime preferred stock exceeded the proceeds from such issuances.

The significant rights, privileges and preferences of the preferred stock are as follows:

Election of Directors

The Company has two classes of directors on the Company's board of directors, designated as standard directors and Series B Prime directors. The holders of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock, Series BB preferred stock and common stock, voting together as a single class on an as-if-converted to common stock basis, are entitled to elect the standard directors. The holders of Series B Prime preferred stock, voting as a single class on an as-if-converted-to-common-stock basis, are entitled to elect Series B Prime directors. The number of Series B Prime directors which the holders of Series B Prime preferred stock are entitled to elect and the number of votes which each Series B Prime director is entitled to cast with respect to any action of the Board of Directors is dependent upon (i) the total number of authorized directors; (ii) the ratio of outstanding Series B Prime preferred stock to the total outstanding shares of Series B preferred stock and Series B Prime preferred stock collectively, including common stock issued on conversion thereof; and (iii) the ratio of total capital committed by holders of Series B Prime preferred stock to the total capital commitments of all holders of Series B preferred stock and Series B Prime preferred stock.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Conversion

Each share of Series B Prime preferred stock is convertible into one share of Series B preferred stock at the option of the holder or automatically at any time that the holder, together with its affiliates, owns less than 8.7% of the aggregate total shares of Series B preferred stock and Series B Prime preferred stock, including common stock issued upon conversion thereof. Each share of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock, and Series BB preferred stock is convertible into one share of common stock, subject to adjustment upon the occurrence of certain events. Each share of preferred stock will automatically be converted into common stock at the conversion price then in effect upon the earlier of (i) the closing of a firm commitment underwritten public offering with aggregate proceeds to the Company in excess of $60 million and a per share price not less than $4.09; or (ii) the consent of the holders of at least 55% of the total outstanding shares of preferred stock, voting together as a single class on an as-if-converted to common stock basis.

Voting Rights

The holder of each share of preferred stock is entitled to the number of votes equal to the number of shares of common stock into which the share of preferred stock could be converted. Other than as stated in the Second Amended and Restated Certificate of Incorporation or as required by law, holders of preferred stock vote together with holders of common stock and not as a separate class or series.

Dividends

Holders of the preferred stock are entitled to receive on a pari passu basis, prior and in preference to any declaration or payment of any dividend on the common stock, noncumulative dividends out of any assets legally available at an annual rate of 8% of the respective original purchase prices for the shares of preferred stock, when and if declared by the board of directors. No dividends on preferred stock have been declared through December 31, 2006.

Liquidation

In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or any change of control of the Company, the holders of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock and Series BB preferred stock are entitled to receive, in preference to distributions to holders of common stock, an amount per share equal to $1.00, $1.3636, $1.3636 and $1.84, respectively, plus any declared but unpaid dividends with respect to such shares of preferred stock. If the assets of the Company are insufficient to permit payment of the liquidation amount in full to all holders of preferred stock, the assets of the Company will be distributed ratably to holders of all series of preferred stock in proportion to the preferential amount each such holder would otherwise be entitled to receive. A change of control of the Company is defined in the Company's Second Amended and Restated Certificate of Incorporation as (i) a sale of all or substantially all the Company's assets other than to certain holders of Series B Prime preferred stock, their affiliates, a group including such holders or affiliates, or entities controlled by the existing stockholders of the Company; (ii) a transaction or series of transactions resulting in more than 50% of the Company's voting power being led by certain holders of Series B Prime preferred stock, their affiliates or a group including such holders or affiliates; or (iii) a merger or consolidation with an entity other than certain holders of Series B Prime preferred stockholders, their affiliates, or a group including such holder or affiliates if after such merger or consolidation the directors immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Common Stock

The Company's Second Amended and Restated Certificate of Incorporation authorizes the Company to issue 252,716,057 shares of common stock. The Company has issued certain shares of its common stock under restricted stock purchase agreements with its executives and a non-employee director and upon the early exercise of stock options. Under the terms of these restricted stock purchase agreements and exercised stock options, the Company has the option to repurchase unvested shares of common stock at the initial purchase price upon the termination of a holder's services to the Company. The number of shares subject to repurchase is reduced ratably over 48 months from the date of purchase or, in the case of stock options early exercised, the date of grant of the stock option.

Unvested shares are subject to a right of repurchase at cost upon termination of employment. The original purchase price paid for these shares are recorded as a liability. Prior to 2004 these amounts were reclassified to permanent equity as these shares vested. In February 2004, each of the Company's executive officers entered into an employment agreement which permits the executive officer or the officer's estate to require the Company to repurchase vested shares at fair market value upon termination of the executive officer's employment due to death or disability. The fair value of vested shares held by the Company's executive officers as of the date of such agreements (the "Agreement Date Fair Value") was recorded as temporary equity and following the date of such agreements, the Agreement Date Fair Value of shares held by the Company's executive officers is recorded as temporary equity as such shares vest. The excess of the Agreement Date Fair Value over the original purchase price paid for such shares is charged against additional paid-in capital or, to the extent additional paid-in capital is insufficient, as an increase to stockholders' deficit. As of December 31, 2005 and 2006, the Company had recorded liability of $184,000 and $98,000 respectively, associated with 2,397,324 and 687,545 unvested shares, respectively. As of December 31, 2005 and 2006, the Company had recorded $5.9 million and $8.2 million as temporary equity, respectively, associated with 4,345,209 and 6,002,085 vested shares held by executive officers, respectively.

The Company has reserved the following shares of authorized but unissued Common Stock as of December 31, 2006:

	Shares
Reserved for conversion of Series A preferred stock	15,000,000
Reserved for conversion of Series B, Series B Prime and Series BB preferred stock	197,900,699
Reserved for the Company's equity incentive plan	23,056,296
Total reserved shares of common stock	235,956,995

14. Stock-Based Compensation

2003 Equity Incentive Plan

In March 2003, the board of directors adopted and the stockholders approved the 2003 Equity Incentive Plan (the "2003 Plan"). The 2003 Plan provides for the grant of incentive and nonstatutory stock options, stock issuances, cash awards and certain other equity-related awards to employees, directors and consultants of the Company. An aggregate of 23,517,858 shares of common stock is reserved under the 2003 plan. Incentive stock options may be granted by the board of directors or a committee of the board of directors to employees with an exercise price not less than 100% of the fair value of the common stock on the date of grant. Nonstatutory stock options may be granted to employees, directors and consultants with an exercise price not less than 85% of the fair market value of the common stock on the date of grant. Option grants to employees generally vest 25% upon the first anniversary of the date of hire and ratably each month thereafter for the next three years. The only

activity under the 2003 Plan since adoption has related to the grant of stock options to employees and a non-employee director, all of which expire ten years from the date of grant if not exercised.

Change in Accounting Principle—Stock Based Compensation Under SFAS 123R

Effective January 1, 2006, the Company adopted SFAS 123R, which requires compensation costs related to share-based transactions, including employee stock options, to be recognized in the financial statements based on fair value.

For each of the three years ended December 31, 2004, 2005, 2006, under both SFAS 123 and SFAS 123R the Company elected to use the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of stock options was estimated at the grant date with using the following assumptions:

	Year Ended December 31,		
	2004	2005	2006
Weighted-average volatility	80%	60%	61%
Weighted-average expected term	5	5	6
Range of risk-free rates	3.0-4.0%	3.9-4.4%	4.6-5.1%
Expected dividend yield	0.0%	0.0%	0.0%

The weighted-average grant date fair value per share of employee stock options granted during the years ended December 31, 2004, 2005 and 2006 was $.81, $.78 and $.97, respectively.

Volatility

As the Company does not have any trading history for its common stock, the expected stock price volatility for the Company's common stock was estimated by taking the median historic stock price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the biopharmaceutical industry similar in size, stage of life cycle and financial leverage. The Company did not rely on the implied volatilities of traded options in its industry peers' common stock, because either the term of those traded options was much shorter than the expected term of the Company's stock option grants, or the volume of activity was relatively low.

Expected Term

The Company has very little historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for its stock option grants. As a result, for stock option grants made during the year ended December 31, 2006, the expected term was estimated using the short-cut method allowed under Securities and Exchange Commission SAB No. 107 *Share-Based Payment*. For stock options granted during the years ended December 31, 2004 and 2005 the Company estimated the expected term of stock options based on the expected terms of options granted by publicly traded industry peers.

Risk-Free Rate

The risk-free interest rate assumption was based on zero coupon U.S. Treasury instruments whose term was consistent with the expected term of the Company's stock option grants.

Expected Dividend Yield

The Company has never declared or paid any cash dividends and does not presently plan to pay cash dividends in the foreseeable future. Consequently, the Company used an expected dividend yield of zero.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Common Stock Fair Value

The fair value of the Company's common stock during the years ended December 31, 2004 and 2005 was determined by its board of directors with assistance from management. In May 2006, the Company engaged an independent valuation specialist to perform a valuation of the Company's common stock. The valuation used a two-step methodology that first estimated the fair value of the Company as a whole, and then allocated a portion of the enterprise value to the Company's common stock. This approach is consistent with the methods outlined in the AICPA Practice Aid Valuation of Privately-Held-Company Equity Securities Issued as Compensation. The valuation methodology utilized both the "income approach" and the "market approach" to estimate enterprise value. The "income approach" estimates the fair value of the enterprise based upon a projection of future cash flows while the "market approach" is based upon comparisons to publicly-held companies in the Company's industry at a similar stage of development. In order to allocate the enterprise value to the various securities that comprise the Company's capital structure the option-pricing method was used. A discount was applied to account for a lack of marketability. After considering this valuation and other factors, the board of directors determined the fair value of the Company's common stock to be $1.50 as of June 28, 2006.

In December 2006, the Company engaged the independent valuation specialist to perform another valuation effective as of December 31, 2006. This valuation was completed in February 2007 and used the same methodology as the previous valuation except that the Company also considered the probability-weighted expected return method for allocating enterprise value to the common stock. After considering the valuation and other factors, including valuation estimates prepared by the Company's proposed underwriters, the board of directors determined the fair value of the Company's common stock to be $1.75 as of February 13, 2007. The board of directors also reviewed the developments of the Company from June 28, 2006 to February 13, 2007 and noted that while there were a number of development milestones reached during the period from June 28, 2006 to December 31, 2006 no such developments occurred in the period from December 31, 2006 to February 13, 2007. Accordingly, the Company increased the estimated fair value of the common stock ratably from $1.50 to $1.75 over the period from June 28, 2006 to December 31, 2006 for purposes of calculating stock-based compensation expense associated with the Company's stock option grants under SFAS 123R.

Forfeitures

SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. In determining the Company's historic forfeiture rate, the Company has excluded stock option grants totaling 12,548,445 shares issued to executives of the Company in February 2004. The Company believes these stock option grants will not be cancelled due to termination, and therefore has applied a forfeiture rate of 0% for those stock option grants. The annualized forfeiture rate used for the remaining stock option grants was 7%. The forfeiture rate selected did not have a material impact on stock-based compensation expense in the year ended December 31, 2006. Prior to adoption of SFAS 123R, the Company accounted for forfeitures of stock option grants as they occurred.

As a result of the Company's Black-Scholes option fair value calculations and the allocation of value to the vesting periods using the straight-line vesting attribution method, the Company recognized $3.5 million of stock-based compensation expense during the year ended December 31, 2006, of which $8,000, $661,000, and $2.8 million were charged to cost of product sales, research and development and selling, general and administrative expense, respectively. The adoption of SFAS 123R caused basic and diluted net loss per common share to increase by $24.51 in 2006. No income tax benefit was recognized in the statement of operations for the year ended December 31, 2006. Compensation cost capitalized as a component of inventory during 2006 was $18,000.

The total compensation cost related to unvested stock option grants not yet recognized as of December 31, 2006 was $5.5 million and the weighted-average period over which these grants are expected to vest is 1.9 years.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes activity under the Company's stock option plans from January 1, 2004 through December 31, 2006:

	Shares Available for Grant	Shares Subject to Outstanding Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value ($000)
Outstanding at December 31, 2003	—	372,500	$ .10		
Shares authorized through Plan amendment	22,815,358	—			
Options granted at fair value on date of grant	(8,806,067)	8,806,067	1.36		
Options granted in excess of fair value on date of grant	(5,019,378)	5,019,378	3.41		
Options exercised	—	(65,000)	.10		
Outstanding at December 31, 2004	8,989,913	14,132,945	2.06		
Options granted at fair value on date of grant	(2,318,500)	2,318,500	1.43		
Options forfeited	303,500	(303,500)	1.22		
Options expired	20,000	(20,000)	.10		
Outstanding at December 31, 2005	6,994,913	16,127,945	1.99		
Options granted at fair value on date of grant	(1,963,600)	1,963,600	1.50		
Options exercised	—	(66,562)	.15		
Options forfeited	337,239	(337,239)	1.38		
Options expired	10,180	(10,180)	1.43		
Outstanding at December 31, 2006	5,378,732	17,677,564	1.95	7.5	$ 4,722
Vested and expected to vest at December 31, 2006		17,182,590	1.97	7.5	$ 4,577
Exercisable at December 31, 2006		10,581,005	2.04	7.2	$ 2,580

The aggregate intrinsic value shown in the table above is equal to the difference between the exercise price of the underlying stock options and $1.75, the fair value of the Company's common stock as of December 31, 2006, for stock options that were in-the-money as of December 31, 2006.

During 2004, stock options exercised had no intrinsic value. No options were exercised during 2005. The aggregate intrinsic value of options exercised during 2006 was $99,000.

The following table summarizes information about stock options outstanding as of December 31, 2006:

	Options Outstanding		Options Exercisable
Exercise Price	Number of Shares	Weighted-Average Remaining Contractual Life (Years)	Number of Shares
$ .10	172,500	6.5	172,500
1.36	9,645,726	7.3	6,479,341
1.50	2,839,954	9.3	373,762
2.73	2,509,692	7.1	1,777,701
4.09	2,509,692	7.1	1,777,701
	17,677,564	7.6	10,581,005

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company has issued new shares of common stock upon all exercises of stock options to date and does not currently expect to repurchase shares of common stock in future years to reserve for issuance upon exercise of stock options.

Accounting and Disclosures Under APB 25 and SFAS 123

Prior to January 1, 2006, the Company accounted for stock-based employee compensation arrangements using the intrinsic value method of APB 25 and related interpretations in accounting for its employee stock options and complied with the disclosure-only provisions of SFAS 123, as amended by SFAS 148. No stock-based compensation expense was recorded under APB 25 during the years ended December 31, 2004 and 2005.

The pro forma information required to be disclosed under SFAS 123 for the years ended December 31, 2004 and 2005 is as follows:

	Year Ended December 31,	
	2004	2005
	(In thousands except per share data)	
Loss attributable to common stockholders, as reported	$(24,804)	$ (85,156)
Add: Employee stock-based compensation using the intrinsic value method	—	—
Deduct: Total employee stock compensation calculated using the fair-value method	(2,325)	(2,934)
Pro forma loss attributable to common stockholders	$(27,129)	$ (88,090)
Loss per share attributable to common stockholders, basic and diluted		
As reported	$(137.80)	$(1,216.51)
Pro forma	$(150.72)	$(1,258.43)

The Company estimated fair value of stock options at the grant date using the assumptions set forth above. The Company granted options with exercise prices equal to fair value per share with weighted-average exercise price per share and fair value per share of $1.36, $1.43 and $1.50 during the years ended December 31, 2004, 2005 and 2006, respectively. The Company granted options with exercise prices greater than fair value per share with a weighted-average exercise price per share of $3.41 and weighted-average fair value per share of $1.36 during the year ended December 31, 2004.

15. Income Taxes

The Company has a history of losses and therefore has made no provision for income taxes. All of the Company’s losses result from domestic operations.

Deferred income taxes reflect the tax effects of net operating loss and tax credit carryforwards and the net temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Significant components of the Company's deferred tax assets and liabilities are as follows (in thousands):

	December 31,	
	2005	2006
Deferred tax assets:		
Federal and state net operating loss carryforwards	$ 48,552	$ 58,474
Federal and state tax credit carryforwards	8,420	9,876
Deferred contract revenues	—	5,453
Acquired capitalized research and development	4,256	3,889
Other	1,996	2,631
Total deferred tax assets	63,224	80,323
Deferred tax liabilities:		
Acquired intangible assets	(27,559)	(24,328)
Other	—	(457)
Total deferred tax liabilities	(27,559)	(24,785)
Valuation allowance	(35,665)	(55,538)
Net deferred tax assets	$ —	$ —

Realization of the deferred tax assets is dependent upon the generation of future taxable income, if any, the amount and timing of which are uncertain. Based on available objective evidence, management believes it more likely than not that the Company's deferred tax assets are not recognizable. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $10.0 million, $24.6 million and $19.9 million for the years ended December 31, 2004, 2005 and 2006, respectively.

At December 31, 2006, the Company had net operating loss carryforwards for federal income tax purposes of approximately $161.0 million which expire in the period from 2008 to 2026, and federal tax credits of approximately $8.0 million which expire in the period from 2008 to 2026. The Company also has state net operating loss carryforwards of approximately $73.0 million which expire beginning in 2013 and state tax credits of approximately $2.0 million which have no expiration date. Utilization of the Company's net operating loss carryforwards and tax credit carryforwards are subject to annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Such an annual limitation may result in the expiration of the net operating loss before utilization. Because our acquisition of Orphan Medical triggered an ownership change, approximately $37.0 million of the net operating loss carryforward is only available ratably through 2018 based upon the annual limitation under Section 382 of the Internal Revenue Code. Similarly, approximately $5.0 million of tax credits are only available from 2019 to 2024.

16. Related Party Transactions

In June 2005, the Company issued senior secured notes in the aggregate principal amount of $80.0 million with interest payable on the notes at the rate of 15% per year, payable quarterly in arrears. The notes are due and payable on June 24, 2011. As of December 31, 2006, KKR TRS Holdings, Inc., an entity affiliated with Kohlberg Kravis Roberts & Co. L.P., and LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., both of which are significant stockholders, held $25.0 million and $31.0 million, respectively, in principal amount of these senior secured notes. The interest expense recognized with respect to notes held by KKR TRS Holdings, Inc. during the fiscal years ended December 31, 2005 and 2006 was $2.1 million and $4.0 million, respectively. The interest expense recognized with respect to notes held by LB I Group during the fiscal years ended

December 31, 2005 and 2006 was $2.5 million and $5.0 million, respectively. No payments of principal were made in either of these periods. In connection with the issuance of the senior secured notes, we issued warrants to purchase 2,717,391 and 3,369,566 shares of our Series BB preferred stock to KKR TRS Holdings, Inc. and LB I Group, respectively.

17. 401(k) Plan

The Company provides a qualified 401(k) savings plan for its employees. All employees are eligible to participate, provided they meet the requirements of the plan. While the Company may elect to match employee contributions, no such matching contributions have been made through December 31, 2006.

18. Segment and Other Information

Management has determined that the Company operates in one business segment which is the development and commercialization of pharmaceutical products.

The following table presents a summary of product sales (in thousands):

	Year Ended December 31,	
	2005	2006
Xyrem	$ 11,200	$ 29,049
Antizol	6,782	12,813
Cystadane	814	1,437
Total	$ 18,796	$ 43,299

The Company had no product sales or other revenues prior to the acquisition of Orphan Medical in June 2005. In March 2007, the Company sold its rights to Cystadane. See Note 19 for a further discussion of this transaction.

The following table presents a summary of total revenues attributed to domestic and foreign sources (in thousands):

	Year Ended December 31,	
	2005	2006
United States	$ 18,305	$ 42,326
Europe	3,020	1,757
All other	117	773
Total	$ 21,442	$ 44,856

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table presents a summary of revenues from significant customers as a percentage of the Company's total revenues:

	Year Ended December 31,	
	2005	2006
Express Scripts	51%	65%
Cardinal Health	*	12%
Amerisource Bergen	15%	*
UCB	12%	*

* Less than 10% of the Company's total revenues.

19. Subsequent Events

Product License Agreement

In January 2007, the Company entered into a product license agreement with Solvay Pharmaceuticals, Inc. ("Solvay") for the rights to market Luvox CR and Luvox in the United States. The Company made a $2.0 million payment upon execution of the agreement, and agreed to make additional payments of up to $138.0 million upon achievement of developmental and commercial milestones. Up to $41.0 million of these milestone payments are payable at or prior to commercial launch of Luvox CR and $2.0 million of these milestone payments are payable if the Company commercially launches Luvox. In addition, the Company is required to pay Solvay royalties at specified rates on commercial sales.

Facilities Lease

In March 2007, the Company entered into a lease agreement for approximately 13,000 square feet of office space in Palo Alto, California. The annual lease payments for this space are approximately $460,000. The fixed term expires in August 2008, after which the Company may extend the term for up to six months subject to certain conditions.

Divestiture of Cystadane

In March 2007, the Company signed a Product Acquisition Agreement with an unrelated third party under which that third party purchased the Company's rights to Cystadane for cash consideration of $9.0 million, along with its associated product registrations, commercial inventory and trademarks. The unrelated third party was also assigned certain contracts related to Cystadane, and assumed substantially all liabilities associated with Cystadane arising subsequent to March 1, 2007. The Company and the third party concurrently entered into a Transition Services Agreement under which the Company has agreed to perform substantially all of the ongoing services necessary for the sale and promotion of Cystadane on behalf of the third party for up to 90 days following the date of the transaction, subject to certain conditions. The Company expects to record a gain of approximately $5.1 million on the sale of the rights to Cystadane in the first quarter of 2007.

Report of Independent Auditors

The Board of Directors and Stockholders
Jazz Pharmaceuticals, Inc.

We have audited the accompanying statements of operations and cash flows of Orphan Medical, Inc. for the period from January 1, 2005 to June 24, 2005. 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 audit.

We conducted our audit in accordance with auditing standards generally accepted in the 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 audit included consideration of the 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 audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the results of operations and cash flows of Orphan Medical, Inc. for the period January 1, 2005 to June 24, 2005, in conformity with accounting principles generally accepted in the United States.

/s/ Ernst & Young LLP

Palo Alto, California
March 6, 2007

ORPHAN MEDICAL, INC.

STATEMENT OF OPERATIONS
(In thousands, except per share amounts)

	Period from January 1, 2005 to June 24, 2005
Revenues:	
Product sales, net	$ 12,966
Royalties, net	71
Contract revenues	1,806
Total revenues	14,843
Operating expenses:	
Cost of product sales	1,975
Research and development	4,212
Selling, general and administrative	12,155
Total operating expenses	18,342
Loss from operations	(3,499)
Interest income	111
Interest expense	(13)
Net loss	(3,401)
Less: Preferred stock dividends	491
Loss attributable to common stockholders	$ (3,892)

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

ORPHAN MEDICAL, INC.

STATEMENT OF CASH FLOWS
(In thousands)

	Period from January 1, 2005 to June 24, 2005
Operating activities	
Net loss	$ (3,401)
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation	196
Stock compensation expense for non-employee	25
Loss on disposal of property and equipment	37
Changes in assets and liabilities:	
Restricted cash	(1)
Prepaid expenses and other current assets	(2,074)
Accounts receivable	(1,045)
Inventories	115
Accounts payable	(1,241)
Accrued liabilities	(510)
Deferred revenue	(806)
Net cash used in operating activities	(8,705)
Investing activities	
Purchases of property and equipment	(5)
Net cash used in investing activities	(5)
Financing activities	
Proceeds from employee stock purchase plan	16
Proceeds from exercise of stock options	164
Payments on capital lease obligations	(9)
Payments on premium finance note	(683)
Preferred stock dividend payments	(388)
Net cash used in financing activities	(900)
Net decrease in cash and cash equivalents	(9,610)
Cash and cash equivalents, at beginning of period	12,709
Cash and cash equivalents, at end of period	$ 3,099
Schedule of non-cash financing activities:	
Issuance of preferred stock dividends	$ 491
Supplemental disclosure of cash flow information:	
Cash paid for interest	$ 4

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

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS

1. Description of Business

Orphan Medical, Inc. (the "Company") acquires, develops, and markets products of high medical value intended to treat sleep disorders, pain and other central nervous system disorders that are addressed by physician specialists. On June 24, 2005, Jazz Pharmaceuticals, Inc. acquired the Company for cash consideration (net of cash acquired) of $145.4 million plus direct acquisition costs of $750,000. At the time of acquisition, the Company had three pharmaceutical products approved for marketing by the U.S. Food and Drug Administration ("FDA").

2. Summary of Significant Accounting Policies

Basis of Presentation

The Statement of Operations and Statement of Cash Flows have been prepared in accordance with U.S. generally accepted accounting principles. These statements were prepared for the purpose of complying with Regulation S-X, Rule 3.05 of the Securities and Exchange Commission and are being included in the Form S-1 of Jazz Pharmaceuticals, Inc.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts and disclosures reported in the financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

Revenue Recognition

Revenues are recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable and collection is reasonably assured. In evaluating arrangements with multiple elements the Company considers whether components of the arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. This evaluation requires subjective determinations and requires management to make judgments about the fair value of individual elements and whether such elements are separable from other aspects of the contractual relationship. The consideration received in such arrangements is allocated among the separate units of accounting based on their respective fair values when there is reliable evidence of fair value for all elements of the arrangement. If there is no evidence of fair value for all the elements of the arrangement consideration is allocated based on the residual value method for the delivered elements. Under the residual method, the amount of revenues allocated to the delivered elements equals the total arrangement consideration less the aggregate fair value of any undelivered elements. The applicable revenue recognition criteria are applied to each of the separate units. Payments received in advance of work performed are recorded as deferred revenues and recognized when earned.

Product Sales, Net

Revenues from sales of Xyrem within the United States are recognized upon transfer of title, which occurs when the Company's specialty pharmaceutical distributor removes product from the Company's consigned inventory location at its facility for shipment to a patient. Antizol is and, prior to our sale of the Company's

rights, and Cystadane was shipped to the Company's wholesaler customers in the United States with free on board destination shipping terms, and the Company recognizes revenues when delivery occurs. The Company's international sales often have customer acceptance clauses and therefore the Company recognizes revenues when it is notified of acceptance or the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, the Company recognizes revenues when title transfers, which is generally when the product leaves the Company's logistics provider's facilities.

Revenues from sales of products within the United States are recorded net of estimated allowances for prompt payment discounts, wholesaler and speciality distributor fees, government chargebacks and rebates. Significant judgment is inherent in the selection of assumptions and in the interpretation of historical experience, as well as the identification of external and internal factors affecting the estimates. Because Xyrem is sold to one distributor in the United States, allowances and adjustments to estimates for allowances have not historically been material.

Royalties, Net

The Company receives royalties from third parties based on sales of its products under out-licensing and distributor arrangements. For those arrangements where royalties are reasonably estimable, the Company recognizes revenues based on estimates of royalties earned during the applicable period, and adjusts for differences between the estimated and actual royalties in the following quarter. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, the Company recognizes revenues upon receipt of royalty statements from the licensee or distributor.

Contract Revenues

Nonrefundable fees where the Company has no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where the Company has continuing performance obligations, nonrefundable fees are deferred and recognized ratably over the performance period. The Company recognizes at-risk milestone payments, which are typically related to regulatory, commercial or other achievements by the Company or its licensees and distributors, as revenues when the milestone is accomplished and collection is reasonably assured. Refundable fees are deferred and recognized as revenues upon the later of when they become nonrefundable or when performance obligations are completed.

Cost of Product Sales

Cost of product sales includes third party manufacturing and distribution costs, the cost of drug substance, royalties due to third parties on product sales, product liability insurance, FDA user fees, freight, shipping, handling and storage costs. The Company's product exchange policy for Antizol and Cystadane allows customers to return expired product for exchange up to six months before or after the product's expiration date. These expiration date returns are exchanged for replacement product, and the estimated cost of such exchanges is included in cost of product sales. Amounts accrued for replacement product have not been material.

Research and Development

The Company's research and development expenses consist of expenses incurred in identifying, developing and testing its product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist us in managing, monitoring and analyzing our clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical studies, fees paid to third parties for development candidates, allocated expenses, such as facilities and

information technology that support the Company's research and development activities and related personnel expenses. For products that have not been approved by the FDA, inventory used in clinical trials is expensed at the time of production and recorded as research and development expense. Research and development costs are expensed as incurred, including payments made under the Company's license agreements. For products that have been approved by the FDA, inventory used in clinical trials is expensed at the time the inventory is packaged for the trial and therefore not included in inventory.

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 the tax basis of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. The Company has a history of losses and therefore has made no provision for income taxes.

Stock-Based Compensation

The Company accounts for stock-based employee compensation arrangements using the intrinsic value method of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, ("APB 25") and complies with the disclosure-only provisions of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, ("SFAS 123") as amended by Statement of Financial Accounting Standards No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure, an amendment to SFAS Statement No. 123 ("SFAS 148")*. Under APB 25 compensation expense for employees is based on the excess, if any, of the fair value of the Company's common stock over the exercise price of the option on the date of grant. No stock-based compensation expense was recorded under APB 25 during the period January 1, 2005 to June 24, 2005. The following table illustrates the effect on net loss and loss per common share if the Company had applied the fair value recognition provisions of SFAS 123 as amended by SFAS 148 to stock-based employee compensation.

	Period from January 1, 2005 to June 24, 2005
Loss attributable to common stockholders, as reported	$ (3,892)
Add: Employee stock-based compensation using the intrinsic value method	—
Deduct: Total employee stock compensation calculated using the fair-value method	(1,240)
Pro forma loss attributable to common stockholders	$ (5,132)
Loss per share attributable to common stockholders, basic and diluted	
As reported	$ (.35)
Pro forma	$ (.46)

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS—(Continued)

The Company estimated the fair value of the stock options using the Black-Scholes method in accordance with SFAS No. 123 as amended by SFAS 148. The fair value of the stock options was estimated at the grant date with the following assumptions:

	Period from January 1, 2005 to June 24, 2005
Expected dividend yield	0%
Expected stock price volatility	65%
Risk-free interest rate	4%
Expected life of option (in years)	8

The weighted average grant date fair value per share of employee stock options granted during the period January 1, 2005 to June 24, 2005 was $6.16.

3. Product License

In October 2003, the Company entered into an agreement with Celltech Pharmaceuticals, Inc., which was subsequently acquired by UCB Pharma Limited (“UCB”), pursuant to which the Company has licensed to UCB all European sales and marketing rights for Xyrem for the treatment of narcolepsy. The Company received $2.5 million upon execution of the agreement which is being amortized on a straight-line basis as contract revenues through September 2005, the expected regulatory approval period. The Company recognized $806,000 of contract revenues in the period from January 1, 2005 to June 24, 2005 related to the upfront payment. UCB also made two $1.0 million milestone payments related to the filing of an application for marketing approval for

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS—(Continued)

Xyrem for the treatment of cataplexy in patients with narcolepsy with the European Agency for the Evaluation of Medicinal Products and to the Company's delivery to UCB of a supplemental new drug application package for Xyrem for the treatment the excessive daytime sleepiness in patients with narcolepsy. These payments were recognized as revenues upon the achievement of the milestones in March 2004 and January 2005, respectively.

4. Segment and Other Information

Management has determined that the Company operates in one business segment, which is the development and commercialization of pharmaceutical products.

The following table presents a summary of product sales (in thousands):

	Period from January 1, 2005 to June 24, 2005
Xyrem	$ 8,034
Antizol	4,267
Cystadane	665
Total	$ 12,966

The following table presents a summary of total revenues attributed to domestic and foreign sources (in thousands):

	Period from January 1, 2005 to June 24, 2005
United States	$ 12,464
Europe	2,107
All other	272
Total	$ 14,843

The following table presents a summary of revenues from significant customers as a percentage of the Company's total revenues:

	Period from January 1, 2005 to June 24, 2005
ExpressScripts	54%
UCB	12%
Cardinal Health	11%
Amerisource Bergen	10%

5. Subsequent Events

Legal Proceedings

In April 2006, a physician who was a speaker for the Company was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment alleges that the physician engaged in a scheme with the Company's sales representatives and other Company employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. Also in April 2006, the

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS—(Continued)

Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, issued to the Company and Jazz Pharmaceuticals subpoenas for documents relating to Xyrem. The Company is cooperating with this investigation and has provided documents to the U.S. Attorney's Office. There have been discussions with the U.S. Attorney's Office regarding the possible settlement of any potential government claims. It is currently unknown if any such settlement will be reached on reasonable terms, or at all. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome. Therefore, in accordance with Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies* ("SFAS 5"), the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

On April 10, 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against the Company and former officers of the Company in the U.S. District Court for the District of Minnesota. The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by the Company in connection with the solicitation of proxies to be voted at the special meeting of Company stockholders held on June 22, 2005 for the purpose of considering and voting upon a proposal to adopt the definitive merger agreement pursuant to which the Company was acquired by Jazz Pharmaceuticals. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the U.S. District Court for the District of Minnesota. On February 16, 2007, the U.S. District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, but granted the plaintiff a one-month leave to amend the plaintiff's complaint. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any judgments or payments that might result from an adverse outcome. Therefore, in accordance with SFAS 5 the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee, the NASD filing fee and the NASDAQ Global Market filing fee.

	Amount to be Paid
SEC registration fee	$ 5,296
NASD filing fee	17,750
NASDAQ Global Market initial listing fee	150,000
Blue sky qualification fees and expenses	15,000
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent and registrar fees and expenses	20,000
Miscellaneous expenses	*
Total	$ *

* To be filed by amendment.

Item 14. Indemnification of Directors and Officers.

We are incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer, director, employee or agent of such corporation, or is or was serving at the request of such person as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses that such officer or director has actually and reasonably incurred. Our third amended and restated certificate of incorporation and our amended and restated bylaws, each of which will become effective upon the closing of this offering, provide for the indemnification of our directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

Our third amended and restated certificate of incorporation and amended and restated bylaws include such a provision. Expenses incurred by any officer or director in defending any such action, suit or proceeding in advance of its final disposition shall be paid by us upon delivery to us of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified by us.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

As permitted by the Delaware General Corporation Law, we have entered into indemnity agreements with each of our directors and officers that require us to indemnify such persons against any and all expenses (including attorneys' fees), witness fees, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any action, suit or proceeding or alternative dispute resolution mechanism, inquiry hearing or investigation, whether threatened, pending or completed, to which any such person may be made a party by reason of the fact that such person is or was a director, an officer or an employee of Jazz Pharmaceuticals or any of its affiliated enterprises, provided that such person's conduct did not constitute a breach of his or her duty of loyalty to us or our stockholders, and was not an act or omission not in good faith or which involved intentional misconduct or a knowing violation of laws. The indemnity agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

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

We have an insurance policy covering our officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act or otherwise. Messrs. Clammer, Michelson and Momtazee are further insured by liability insurance that has been purchased by Kohlberg Kravis Roberts & Co. L.P. on their behalf for any excess liabilities that are not covered by our liability insurance. Mr. Colella is insured by liability insurance purchased on his behalf by, and indemnified pursuant to the governing agreements of, Versant Ventures for his service on our board of directors.

We plan to enter into an underwriting agreement that provides that the underwriters are obligated, under some circumstances, to indemnify our directors, officers and controlling persons against specified liabilities, including liabilities under the Securities Act.

Item 15. Recent Sales of Unregistered Securities.

The following list sets forth information regarding all unregistered securities sold by us since our inception through January 31, 2007.

(1) Since our inception through January 31, 2007, we have granted options under our 2003 Stock Equity Incentive Plan, to purchase 18,810,045 shares of common stock to employees and directors, having exercise prices ranging from $.10 to $4.09 per share. Of these, options to purchase 463,924 shares of common stock have been exercised for aggregate consideration of $52,536.02, at exercise prices ranging from $.10 to $1.36 per share. As of January 31, 2007, we have cancelled options to purchase 773,347 shares of common stock.

(2) On March 20, 2003, we issued and sold an aggregate of 3,960,000 shares of common stock to two of our executive officers for aggregate consideration of $9,108.

(3) On March 31, 2003, we issued and sold 815,000 shares of common stock to one of our executive officers for aggregate consideration of $1,874.50.

(4) On April 18, 2003, we issued and sold 300,000 shares of common stock to one of our executive officers for aggregate consideration of $1,500.

(5) On April 23, 2003, we issued and sold 330,000 shares of common stock to one of our executive officers for aggregate consideration of $3,300.

(6) On April 30, 2003, we issued and sold an aggregate of 2,150,000 shares of Series A preferred stock to a total of six accredited investors for aggregate consideration of $2,150,000.

(7) On August 29, 2003, we issued and sold an aggregate of 5,000,000 shares of Series A preferred stock to a total of five accredited investors for aggregate consideration of $5,000,000.

(8) On October 30, 2003, we issued and sold 660,000 shares of common stock to one of our executive officers for aggregate consideration of $66,000.

(9) On January 9, 2004, we issued and sold an aggregate of 232,500 shares of common stock to one of our executive officers for aggregate consideration of $23,250.

(10) On January 14, 2004, we issued and sold an aggregate of 7,850,000 shares of Series A preferred stock to a total of five accredited investors for aggregate consideration of $7,850,000.

(11) On February 18, 2004, we issued and sold an aggregate of 17,307,128 shares of Series B preferred stock to a total of thirty-one accredited investors for aggregate consideration of $23,599,999.74.

(12) On February 18, 2004, we issued and sold an aggregate of 19,067,175 shares of Series B Prime preferred stock to a total of two institutional and accredited investors for aggregate consideration of $25,999,999.83.

(13) On April 6, 2004, we issued and sold an aggregate of 293,341 shares of Series B preferred stock to a total of two accredited investors for aggregate consideration of $399,999.79.

(14) On September 24, 2004, we issued and sold an aggregate of 146,671 shares of common stock to one of our directors for aggregate consideration of $200,000.58.

(15) On June 20, 2005, we issued and sold an aggregate of 35,200,937 shares of Series B preferred stock to a total of thirty-four accredited investors for aggregate consideration of $47,999,997.69.

(16) On June 20, 2005, we issued and sold an aggregate of 38,134,351 shares of Series B Prime preferred stock to a total of two accredited investors for aggregate consideration of $52,000,001.02.

(17) On June 24, 2005, in connection with the issuance of our senior secured notes in the aggregate principal amount of $80,000,000, we issued and sold warrants to purchase an aggregate of 8,695,652 shares of Series BB preferred stock to a total of eight accredited investors. Pursuant to the terms of

the agreement governing the issuance of the senior secured notes and warrants, the aggregate consideration allocated to the warrants was $5,360,000.00.

(18) On January 26, 2006, we issued and sold an aggregate of 12,320,326 shares of Series B preferred stock to a total of thirty-two accredited investors for aggregate consideration of $16,799,996.53.

(19) On January 26, 2006, we issued and sold an aggregate of 13,347,023 shares of Series B Prime preferred stock to a total of two accredited investors for aggregate consideration of $18,200,000.56.

(20) On December 14, 2006, we issued and sold an aggregate of 22,880,598 shares of Series B preferred stock to a total of thirty-two institutional and accredited investors for aggregate consideration of $31,199,983.44.

(21) On December 14, 2006, we issued and sold an aggregate of 24,787,326 shares of Series B Prime preferred stock to a total of two institutional and accredited investors for aggregate consideration of $33,799,997.74.

The offers, sales and issuances of the securities described in Item 15(1) were exempt from registration under the Securities Act under Rule 701 in that the transactions were under compensatory benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of such securities were our employees or directors and received the securities under our 2003 Equity Incentive Plan. Appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment or business relationships, to information about us.

The offers, sales, and issuances of the securities described in Items 15(2) through 15(21) were exempt from registration under the Securities Act under Section 4(2) of the Securities Act and Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited or sophisticated person and had adequate access, through employment, business or other relationships, to information about us.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description of Document
1.1†	Form of Underwriting Agreement.
2.1	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.
3.1	Second Amended and Restated Certificate of Incorporation of the Registrant, currently in effect.
3.2†	Form of Third Amended and Restated Certificate of Incorporation of the Registrant to be effective upon the closing of this offering.
3.3	Amended and Restated Bylaws of the Registrant, currently in effect.
3.4†	Form of Amended and Restated Bylaws of the Registrant to be effective upon the closing of this offering.
4.1	Reference is made to exhibits 3.1 through 3.4.
4.2†	Specimen Common Stock Certificate.
4.3+	Second Amended and Restated Investor Rights Agreement, dated as of June 24, 2005, by and between the Registrant and the other parties named therein.
4.4	Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005, by and among the Registrant, Twist Merger Sub, Inc. and the Purchasers.

Exhibit Number	Description of Document
4.5	Form of Senior Secured Note of the Registrant.
4.6	Form of Series BB Preferred Stock Warrant of the Registrant.
5.1†	Opinion of Cooley Godward Kronish LLP.
9.1†	Second Amended and Restated Voting Agreement, dated as of June 24, 2005, by and among the Registrant and the other parties named therein.
10.1+	Form of Indemnification Agreement between the Registrant and its officers and directors.
10.2+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Bruce Cozadd.
10.3+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Samuel Saks.
10.4+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Robert Myers.
10.5+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Matthew Fust.
10.6+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Carol Gamble.
10.7+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Janne Wissel.
10.8+	Stock Purchase Agreement, dated as of September 24, 2004, by and between the Registrant and Alan Sebulsky.
10.9+	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Bruce Cozadd.
10.10+	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Bruce Cozadd.
10.11+	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce Cozadd.
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10.14+	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Samuel Saks.
10.15+	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Samuel Saks.
10.16+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Robert Myers.
10.17+	Amendment No. 1 to Amended and Restated Stock Purchase Agreement, dated as of December 18, 2003, by and between the Registrant and Robert Myers.
10.18+	Common Stock Purchase Agreement, dated as of January 9, 2004, by and between the Registrant and Robert Myers.
10.19+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Matthew Fust.
10.20+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Carol Gamble.

Exhibit Number	Description of Document
10.21+†	2003 Equity Incentive Plan, as amended.
10.22+†	Form of Stock Option Agreement and Form of Option Grant Notice under the 2003 Equity Incentive Plan.
10.23+†	2007 Equity Incentive Plan.
10.24+†	Form of Option Agreement and Form of Option Grant Notice under the 2007 Equity Incentive Plan.
10.25+†	2007 Non-Employee Directors Stock Option Plan.
10.26+†	Form of Stock Option Agreement and Form of Option Grant Notice under the 2007 Non-Employee Directors Stock Option Plan.
10.27+†	2007 Employee Stock Purchase Plan.
10.28+†	Form of 2007 Employee Stock Purchase Plan Offering Document.
10.29+	Jazz Pharmaceuticals, Inc. Cash Bonus Plan.
10.30†	Asset Purchase Agreement, dated as of October 4, 2004, by and among the Registrant, Glaxo Group Limited and SmithKline Beecham Corporation dba GlaxoSmithKline.
10.31†	Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of November 6, 1996, as amended, by and between Orphan Medical, Inc. and Lonza, Inc.
10.32†	Services Agreement dated as of July 29, 2002, as amended, between Orphan Medical, Inc. and Express Scripts Specialty Distribution Services, Inc.
10.33†	Xyrem Supply Agreement dated as of June 30, 2000, as amended, by and between Orphan Medical, Inc. and DSM Pharmaceuticals, Inc.
10.34†	Amended and Restated Xyrem License and Distribution Agreement, dated as of June 30, 2006, by and between the Registrant and UCB Pharma Limited.
10.35†	License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.36†	Supply Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.37†	Trademark License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.38†	Assignment, Assumption and Consent, dated as of January 31, 2007, by and among the Registrant, Solvay Pharmaceuticals, Inc and Elan Pharma International Limited.
10.39†	License Agreement, dated as of December 22, 1997, as amended, by and among Solvay Pharmaceuticals, Inc and Elan Pharma International Limited.
10.40†	Commercial Lease, dated as of June 2, 2004, by and between the Registrant and The Board of Trustees of the Leland Stanford Junior University.
10.41†	Sublease Agreement, dated as of February 25, 2007, by and between Xerox Corporation and the Registrant.
21.1	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Independent Auditors.
23.3†	Consent of Cooley Godward Kronish LLP (included in Exhibit 5.1).
24.1	Power of Attorney (see page II-10 to this Registration Statement on Form S-1).

* Previously filed.
† To be filed by amendment.
+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules. The following financial statement schedule is included herewith:

Schedule II

Valuation and Qualifying Accounts
(In thousands)

	Balance at beginning of period	Additions(3)	Additions charged to costs and expenses(4)	Deductions	Balance at end of period
For the year ended December 31, 2006					
Allowance for doubtful accounts(1)	$ 25	$ —	$ 28	$ (3)	$ 50
Allowance for sales discounts(1)	71	—	880	(857)	94
Allowance for chargebacks(1)	26	—	212	(233)	5
Allowance for customer rebates(1)	—	—	44	(26)	18
Allowance for wholesaler fees(1)	153	—	203	(325)	31
Allowance for government rebates(2)	88	—	229	(254)	63
For the year ended December 31, 2005					
Allowance for doubtful accounts(1)	$ —	$ 25	$ 14	$ (14)	$ 25
Allowance for sales discounts(1)	—	62	381	(372)	71
Allowance for chargebacks(1)	—	25	57	(56)	26
Allowance for customer rebates(1)	—	—	—	—	—
Allowance for wholesaler fees(2)	—	134	64	(45)	153
Allowance for government rebates(2)	—	115	135	(162)	88
For the year ended December 31, 2004					
Allowance for doubtful accounts	$ —	$ —	$ —	$ —	$ —
Allowance for sales discounts	—	—	—	—	—
Allowance for chargebacks	—	—	—	—	—
Allowance for customer rebates	—	—	—	—	—
Allowance for wholesaler fees	—	—	—	—	—
Allowance for government rebates	—	—	—	—	—

Notes
(1) shown as a reduction of accounts receivable
(2) included in accrued liabilities
(3) amounts represent the liabilities assumed as a result of the acquisition of Orphan Medical, Inc. on June 24, 2005
(4) all charges except doubtful accounts are reflected as a reduction of revenue

All other schedules are omitted because they are inapplicable or the requested information is shown in the consolidated financial statements of the registrant or related 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 for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, 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, 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 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, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the 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, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Palo Alto, State of California, on the 8th day of March, 2007.

JAZZ PHARMACEUTICALS, INC.

By: /s/ SAMUEL R. SAKS, M.D.

Samuel R. Saks, M.D.
Chief Executive Officer

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

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

Signature	Title	Date
/s/ SAMUEL R. SAKS, M.D. **Samuel R. Saks, M.D.**	Chief Executive Officer and Member of the Board of Directors (*Principal Executive Officer*)	March 8, 2007
/s/ MATTHEW K. FUST **Matthew K. Fust**	Senior Vice President and Chief Financial Officer (*Principal Accounting and Financial Officer*)	March 8, 2007
/s/ ADAM H. CLAMMER **Adam H. Clammer**	Director	March 8, 2007
/s/ SAMUEL D. COLELLA **Samuel D. Colella**	Director	March 8, 2007
/s/ BRUCE C. COZADD **Bruce C. Cozadd**	Director	March 8, 2007
/s/ BRYAN C. CRESSEY **Bryan C. Cressey**	Director	March 8, 2007
/s/ MICHAEL W. MICHELSON **Michael W. Michelson**	Director	March 8, 2007
/s/ JAMES C. MOMTAZEE **James C. Momtazee**	Director	March 8, 2007
/s/ KENNETH W. O'KEEFE **Kenneth W. O'Keefe**	Director	March 8, 2007
/s/ ALAN M. SEBULSKY **Alan M. Sebulsky**	Director	March 8, 2007
/s/ JAMES B. TANANBAUM, M.D. **James B. Tananbaum, M.D.**	Director	March 8, 2007

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10.18+	Common Stock Purchase Agreement, dated as of January 9, 2004, by and between the Registrant and Robert Myers.
10.19+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Matthew Fust.
10.20+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Carol Gamble.
10.21+†	2003 Equity Incentive Plan, as amended.
10.22+†	Form of Stock Option Agreement and Form of Option Grant Notice under the 2003 Equity Incentive Plan.
10.23+†	2007 Equity Incentive Plan.
10.24+†	Form of Option Agreement and Form of Option Grant Notice under the 2007 Equity Incentive Plan.
10.25+†	2007 Non-Employee Directors Stock Option Plan.
10.26+†	Form of Stock Option Agreement and Form of Option Grant Notice under the 2007 Non-Employee Directors Stock Option Plan.
10.27+†	2007 Employee Stock Purchase Plan.
10.28+†	Form of 2007 Employee Stock Purchase Plan Offering Document.
10.29+	Jazz Pharmaceuticals, Inc. Cash Bonus Plan.
10.30†	Asset Purchase Agreement, dated as of October 4, 2004, by and among the Registrant, Glaxo Group Limited and SmithKline Beecham Corporation dba GlaxoSmithKline.
10.31†	Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of November 6, 1996, as amended, by and between Orphan Medical, Inc. and Lonza, Inc.
10.32†	Services Agreement dated as of July 29, 2002, as amended, between Orphan Medical, Inc. and Express Scripts Specialty Distribution Services, Inc.
10.33†	Xyrem Supply Agreement dated as of June 30, 2000, as amended, by and between Orphan Medical, Inc. and DSM Pharmaceuticals, Inc.
10.34†	Amended and Restated Xyrem License and Distribution Agreement, dated as of June 30, 2006, by and between the Registrant and UCB Pharma Limited.
10.35†	License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.36†	Supply Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.

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Exhibit Number	Description of Document
10.37†	Trademark License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.38†	Assignment, Assumption and Consent, dated as of January 31, 2007, by and among the Registrant, Solvay Pharmaceuticals, Inc and Elan Pharma International Limited.
10.39†	License Agreement, dated as of December 22, 1997, as amended, by and among Solvay Pharmaceuticals, Inc and Elan Pharma International Limited.
10.40†	Commercial Lease, dated as of June 2, 2004, by and between the Registrant and The Board of Trustees of the Leland Stanford Junior University.
10.41†	Sublease Agreement, dated as of February 25, 2007, by and between Xerox Corporation and the Registrant.
21.1	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Independent Auditors.
23.3†	Consent of Cooley Godward Kronish LLP (included in Exhibit 5.1).
24.1	Power of Attorney (see page II-10 to this Registration Statement on Form S-1).

* Previously filed.
† To be filed by amendment.
+ Indicates management contract or compensatory plan.

Exhibit 2.1

Execution Copy

AGREEMENT AND PLAN OF MERGER

AMONG

JAZZ PHARMACEUTICALS, INC.,

TWIST MERGER SUB, INC.

AND

ORPHAN MEDICAL, INC.

Dated as of April 18, 2005

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of April 18, 2005 (this "Agreement"), is among Jazz Pharmaceuticals, Inc., a Delaware corporation ("Buyer"), Twist Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Buyer ("Sub"), and Orphan Medical, Inc., a Delaware corporation (the "Company") (Sub and the Company being hereinafter collectively referred to as the "Constituent Corporations").

RECITALS:

A. The respective Boards of Directors of Buyer, Sub and the Company have approved and declared advisable the merger of Sub with and into the Company upon the terms and subject to the conditions of this Agreement (the "Merger"), and the respective Boards of Directors of Buyer, Sub and the Company have approved this Agreement and the Board of Directors of the Company has resolved to recommend to its stockholders the adoption of this Agreement;

B. The respective Boards of Directors of Buyer and the Company have determined that the Merger is advisable and in the best interest of their respective stockholders; and

C. Concurrently with the execution and delivery of this Agreement, as a condition and inducement to the willingness of Buyer and Sub to enter into this Agreement, certain of the Company's stockholders are entering into a voting agreement in the form attached hereto as Exhibit A (the "Voting Agreement").

NOW, THEREFORE, in consideration of the premises, representations, warranties and agreements herein contained, the parties agree as follows:

ARTICLE I
THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions hereof, and in accordance with the Delaware General Corporation Law (the "DGCL"), Sub shall be merged with and into the Company at the Effective Time. Following the Merger, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Sub in accordance with the DGCL.

Section 1.2 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") and all actions specified in this Agreement to occur at the Closing shall take place at the offices of Dorsey & Whitney LLP, 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402, no later than the second business day following the day on which the last of the conditions set forth in Article VII shall have been fulfilled or waived (if permissible) (the "Closing Date") or at such other time and place as Buyer and the Company shall agree.

Section 1.3 Effective Time. Subject to the terms and conditions set forth in this Agreement, on the Closing Date: (i) the Certificate of Merger (the "Certificate of Merger") in

form and substance reasonably acceptable to Buyer and the Company shall be duly executed by the Company and Sub and thereafter filed with the Secretary of State of the State of Delaware, and (ii) the parties shall make such other filings with the Secretary of State of the State of Delaware as shall be necessary to effect the Merger. The Merger shall become effective at such time as a properly executed Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or such later time as Buyer and the Company may agree upon and as may be set forth in the Certificate of Merger. The time the Merger becomes effective is referred to herein as the "Effective Time".

Section 1.4 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and Section 259 of the DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all properties, rights privileges, powers and franchises of the Company and Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 1.5 Certificate of Incorporation and By-laws; Directors and Officers.

(a) The Certificate of Incorporation of the Surviving Corporation in effect at the Effective Time shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law. The By-laws of Sub in effect at the Effective Time will be the By-laws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law.

(b) The directors of Sub at the Effective Time shall automatically, and without further action, be the directors of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be. The officers of the Sub at the Effective Time shall be the officers of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

ARTICLE II
CONSIDERATION; EXCHANGE OF CERTIFICATES

Section 2.1 Conversion of Securities. As of the Effective Time, by virtue of the Merger and without any action on the part of Sub, the Company or the holders of any capital stock of the Constituent Corporations:

(a) Except as set forth in Section 2.1(b), each issued and outstanding share of common stock, par value $.01 per share, of Sub shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation and shall constitute the only shares of capital stock of the Surviving Corporation outstanding immediately after the Effective Time.

(b) All shares of Company Capital Stock that are held in the treasury of the Company and any shares of Company Capital Stock owned by Buyer or Sub or any other Subsidiary of Buyer, direct or indirect, shall automatically be canceled and retired and shall cease to exist and no capital stock of Buyer or other consideration shall be delivered in exchange therefor. Shares of Company Capital Stock held by wholly owned Subsidiaries of the Company shall remain outstanding.

(c) At the Effective Time, each then issued and outstanding share of Company Common Stock (other than Dissenting Shares and shares described in Section 2.1(b)) shall immediately cease to be outstanding, shall automatically be cancelled and retired, shall cease to exist, and shall be converted into the right to receive $10.75 in cash, without interest (the "Per Common Share Price") to be distributed in accordance with this Section 2.1(c), 2.3, and 2.4.

(d) At the Effective Time, each then issued and outstanding share of Senior Preferred Stock (other than Dissenting Shares and shares described in Section 2.1(b)) shall immediately cease to be outstanding, shall automatically be cancelled and retired, shall cease to exist, and shall be converted into the right to receive $1,320.6386 in cash, without interest, together with all accrued but unpaid dividends (the "Per Senior Preferred Share Price") to be distributed in accordance with this Section 2.1(d), 2.3, and 2.4.

(e) At the Effective Time, each then issued and outstanding share of Series B Preferred Stock (other than Dissenting Shares and shares described in Section 2.1(b)) shall immediately cease to be outstanding, shall automatically be cancelled and retired, shall cease to exist, and shall be converted into the right to receive $1,653.8462 in cash, without interest, together with all accrued but unpaid dividends (the "Per Series B Preferred Share Price") to be distributed in accordance with this Section 2.1(e), 2.3, and 2.4.

(f) The aggregate consideration payable by Buyer pursuant to Sections 2.1(c), (d) and (e) is referred to herein as the "Merger Consideration". At the Effective Time, each holder of Company Capital Stock shall cease to have any rights with respect to such issued and outstanding shares (other than Dissenting Shares) of Company Capital Stock (including, without limitation, the right to vote), except for the right to receive his, her or its respective portion of the Merger Consideration. Notwithstanding the foregoing, if, between the date of this Agreement and the Effective Time, the outstanding shares of Company Common Stock shall have been changed into a different number of shares or a different class by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, then the Merger Consideration shall be correspondingly adjusted to reflect such stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares.

Section 2.2 Company Stock Options; Warrants.

(a) The Company shall take all requisite action so that, as of the Effective Time, each Company Stock Option that is outstanding immediately prior to, and vested as of, the Effective Time, by virtue of the Merger and without further action on the part of Buyer, Sub, the Company or the holder of that Company Stock Option, shall be cancelled and converted into the right to receive an amount in cash, without interest, equal to (i) the Option Share Amount multiplied by (ii) the aggregate number of vested shares of Company Common Stock into which the applicable Company Stock Option was exercisable immediately prior to the Effective Time. Each Company Stock Option, solely to the extent not vested as of the Effective Time, by virtue of the Merger and without further action on the part of Buyer, Sub, the Company or the holder of that Company Stock Option, shall be cancelled and no payment shall be made with respect to

such unvested shares of Company Common Stock. The payment of the Option Share Amount to the holder of a Company Stock Option shall be reduced by any income or employment Tax withholding required under (A) the Code, or (B) any applicable state, local or foreign Tax Laws. To the extent that any amounts are withheld, such amounts shall be treated for all purposes as having been paid to the holder of that Company Stock Option.

(b) The Company shall take all requisite action so that, as of the Effective Time, each Warrant that is outstanding immediately prior to the Effective Time, whether or not then exercisable or vested, by virtue of the Merger and without further action on the part of Buyer, Sub, the Company or the holder of that Warrant, shall be cancelled and converted into the right to receive an amount in cash, without interest, equal to (i) the Warrant Share Amount multiplied by (ii) the aggregate number of shares of Company Capital Stock into which the applicable Warrant was exercisable immediately prior to the Effective Time (whether or not then vested or exercisable by its terms). The payment of the Warrant Share Amount to the holder of a Warrant shall be reduced by any income Tax withholding required under (A) the Code, or (B) any applicable state, local or foreign Tax Laws. To the extent that any amounts are withheld, such amounts shall be treated for all purposes as having been paid to the holder of that Warrant.

(c) The "Option Share Amount" means (i) the Per Common Share Price less (ii) the exercise or purchase price per share of Company Common Stock subject or related to the applicable Company Stock Option.

(d) The "Warrant Share Amount" means (i) $10.75 less (ii) the exercise or purchase price per share of Company Capital Stock subject or related to the applicable Warrant.

(e) The Company shall take all action reasonably necessary to implement the provisions of this Section 2.2 and to ensure that no Company Stock Option shall be exercisable for Company Common Stock, and no Warrant shall be exercisable for Company Capital Stock, following the Effective Time. At the Effective Time, all Company Stock Options and Warrants shall be cancelled and all Company Stock Option Plans shall terminate, and the Company shall take all actions to ensure that such cancellations and terminations occur. All administrative and other rights and authorities granted under any Company Stock Option Plan to the Company, the board of directors of the Company or any committee or designee thereof, shall, following the Effective Time, reside with the Surviving Corporation.

Section 2.3 Payment of Merger Consideration.

(a) Prior to the Effective Time, Buyer shall appoint a commercial bank or trust company reasonably acceptable to the Company, as a paying agent (the "Paying Agent") for the benefit of the holders of Company Capital Stock that are not Dissenting Shares and who are entitled to receive the Merger Consideration (collectively, the "Holders"). At the Effective Time, Buyer shall make available to the Paying Agent an amount of cash sufficient to permit payment of the Merger Consideration to the Holders (the "Exchange Fund"). The Paying Agent shall invest the Exchange Fund as directed by Buyer or the Surviving Corporation, as the case may be, on a daily basis, and any interest and other income resulting from such investments shall be paid to the Surviving Corporation. The Paying Agent shall exchange the shares of Company Capital Stock for the Merger Consideration in accordance with the terms of this Article II, through such reasonable procedures as the Paying Agent or Buyer may adopt.

(b) As soon as practicable after the Effective Time, Buyer or the Paying Agent shall cause to be mailed to each record holder of a certificate or certificates that immediately prior to the Effective Time represented Company Capital Stock converted in the Merger (the "Certificates") a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon actual delivery of the Certificates to the Paying Agent, and shall contain instructions for use in effecting the surrender of the Certificates and payment of the Merger Consideration). The Paying Agent shall accept such certificates upon compliance with such reasonable terms and conditions as the Paying Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. Upon surrender for cancellation to the Paying Agent of a Certificate held by any Holder, together with such letter of transmittal, duly executed, the Holder of such Certificate shall be entitled to receive in exchange therefor that amount of cash equal to the portion of the Merger Consideration for each share of Company Capital Stock represented by the Certificate. Any Certificate so surrendered shall forthwith be canceled.

(c) Notwithstanding the foregoing, no amounts shall be payable at the Effective Time with respect to any Dissenting Shares or any shares of Company Capital Stock with respect to which dissenters' rights have not terminated. In the case of Dissenting Shares, payment shall be made in accordance with Section 2.9 and the DGCL. In the case of any shares of Company Capital Stock with respect to which dissenters' rights have not terminated as of the Effective Time, if such shares of Company Capital Stock become Dissenting Shares, payment shall be made in accordance with Section 2.9 and the DGCL, and if, instead, the dissenters' rights with respect to such shares irrevocably terminate after the Effective Time, such shares of Company Capital Stock shall be entitled to receive a portion of the Merger Consideration in accordance with the provisions of this Section 2.3.

(d) Any portion of the Exchange Fund that remains undistributed to the former Holders for six months after the Effective Time shall be delivered to the Surviving Corporation and any former Holders who have not theretofore complied with this Article II shall thereafter look only to the Surviving Corporation for payment of any portion of the Merger Consideration. None of the Paying Agent, Buyer nor the Surviving Corporation shall be liable to any holder of shares of Company Capital Stock for cash delivered to a public official in connection herewith pursuant to any applicable abandoned property, escheat or similar law.

Section 2.4 Transfer Taxes; Withholding. If any cash is to be paid to or issued in a name other than that in which the Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the Person requesting such exchange shall pay to the Surviving Corporation or the Paying Agent any transfer or other taxes required by reason of the payment of cash in a name other than that of the registered holder of the Certificate surrendered, or shall establish to the satisfaction of the Surviving Corporation or the Paying Agent that such tax has been paid or is not applicable. Buyer, the Surviving Corporation or the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Capital Stock such

amounts as Buyer or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Code or under any provision of state, local or foreign tax law. To the extent that amounts are so withheld by Buyer, the Surviving Corporation or the Paying Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Capital Stock in respect of which such deduction and withholding was made by Buyer, the Surviving Corporation or the Paying Agent and transmitted by Buyer, the Surviving Corporation or the Paying Agent to the appropriate taxing authority with attribution to each specific Holder.

Section 2.5 No Further Ownership Rights in Company Common Stock. All amounts paid to Holders upon the surrender for exchange of Certificates in accordance with the terms hereof shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Capital Stock represented by such Certificates.

Section 2.6 Closing of Company Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Capital Stock shall thereafter be made on the records of the Company. If, after the Effective Time, Certificates are presented to the Surviving Corporation or Buyer, such Certificates shall be canceled and exchanged as provided in this Article II.

Section 2.7 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation or the Paying Agent, the posting by such Person of a bond, in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against them with respect to such Certificate, the Surviving Corporation will pay in exchange for such lost, stolen or destroyed Certificate the amounts to which the holders thereof are entitled pursuant to Section 2.1.

Section 2.8 Further Assurances. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of either of the Constituent Corporations, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Constituent Corporation, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation's right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Constituent Corporation and otherwise to carry out the purposes of this Agreement.

Section 2.9 Dissenters' Rights.

(a) Shares of Company Capital Stock that have not been voted for approval of this Agreement or consented thereto in writing and with respect to which a demand for payment and appraisal has been properly made and perfected in accordance with Section 262 of the

DGCL ("Dissenting Shares") or shares that have not voted in favor of the Merger and with respect to which dissenters' rights have not terminated, will not be converted into the right to receive from the Surviving Corporation the portion of the Merger Consideration otherwise payable with respect to such shares at or after the Effective Time and the holder thereof shall be entitled only to such rights are as granted by the DGCL. If a holder of Dissenting Shares (a "Dissenting Stockholder") fails to perfect, withdraws or loses his or her demand for such payment and appraisal or such Dissenting Shares (or such other shares with respect to which dissenters' rights have not terminated) become ineligible for such payment and appraisal, then, as of the Effective Time or the occurrence of such event of withdrawal or ineligibility, whichever last occurs, such holder's Dissenting Shares will cease to be Dissenting Shares (or, in the case of such other shares, the dissenters' rights shall have terminated) and each share of Company Capital Stock will be converted into the right to receive, and will be exchangeable for, the portion of the Merger Consideration into which such Dissenting Shares would have been converted pursuant to Section 2.1.

(b) The Company shall give Buyer and Sub prompt notice of any demand received by the Company from a holder of Dissenting Shares for appraisal of shares of Company Capital Stock, withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company, and copies of any correspondence received by the Company relating to any such demand or potential demand, and the Surviving Corporation and Buyer shall have the right to participate in and, after the Effective Time, to direct, all negotiations and proceedings with respect to such demand. The Company agrees that, except with the prior written consent of Buyer and Sub, or as required under the DGCL, it will not voluntarily make any payment with respect to, or settle or offer or agree to settle, any such demand for appraisal. Each Dissenting Stockholder who, pursuant to the provisions of Section 262 of the DGCL, becomes entitled to payment of the value of the Dissenting Shares will receive payment therefor after the value therefor has been agreed upon or finally determined pursuant to such provisions, and any Merger Consideration that would have been payable with respect to such Dissenting Shares will be retained by Buyer.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Buyer and Sub, except as set forth in a disclosure letter (the "Company Disclosure Letter") delivered to Buyer and Sub on the date of this Agreement (which disclosure letter shall be arranged in sections corresponding to the numbered and lettered sections of this Article III, and any information disclosed in any such section of the disclosure letter shall be deemed to be disclosed only for purposes of the corresponding section of this Article III, unless it is readily apparent that the disclosure contained in such section of the disclosure letter contains enough information regarding the subject matter of other representations and warranties contained in this Article III as to clearly qualify or otherwise clearly apply to such other representations and warranties), as follows:

Section 3.1 Organization and Qualification; Subsidiaries.

(a) The Company is duly organized and validly existing under the laws of the State of Delaware and has the requisite corporate power and authority to carry on its business as

it is now being conducted. The Company is qualified to transact business and, where applicable, is in good standing in each jurisdiction in which the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) For purposes of this Agreement,

(i) any reference to any event, change or effect being "material" with respect to any entity means an event, change or effect that is material in relation to the financial condition, businesses or results of operations of such entity and its Subsidiaries taken as a whole; and

(ii) the term "Material Adverse Effect" shall mean a material adverse effect on the financial condition, businesses or results of operations of the Company and its Subsidiaries taken as a whole; provided, that the following shall not be deemed to have a Material Adverse Effect: any change or event caused by or resulting from (A) changes, after the date hereof, in prevailing economic or market conditions in the United States, (B) changes or events, after the date hereof, affecting the industries in which the Company and its Subsidiaries operate generally, (C) changes, after the date hereof, in generally accepted accounting principles or requirements applicable to the Company and its Subsidiaries, (D) changes, after the date hereof, in laws, rules or regulations of general applicability or interpretations thereof by any Governmental Authority (except, with respect to each of clauses (A) through (D) of this Section 3.1(b)(ii), to the extent those changes or events have a disproportionate effect on the Company and its Subsidiaries relative to other similarly situated participants in the industries in which they operate), (E) changes or events, after the date hereof, arising from the announcement or pendency of the Merger or the transactions contemplated by this Agreement other than changes or events directly affecting the customers, suppliers or employees of the Company and its Subsidiaries; (F) any change in the trading price of the Company Common Stock in and of itself, (G) any failure, in and of itself, by the Company to meet internal or other estimates, predictions, projections or forecasts of revenue, net income or any other measure of financial performance (it being understood that, with respect to clauses (F) and (G), the facts or circumstances giving rise or contributing to such change in trading price or failure to meet estimates or projections may be deemed to constitute, and shall be taken into account in determining whether there has been, a Material Adverse Effect), or (H) any act of terrorism, commencement or escalation of armed hostilities in the U.S. or internationally against U.S. citizens or facilities in any other country which the Company or its Subsidiaries conduct business, or any declaration of war against the U.S. by any country in which the Company or its Subsidiaries conduct business. Notwithstanding any of the foregoing, (1) any change, event or occurrence (except with respect to any data relating solely to the efficacy of Xyrem in the treatment of fibromyalgia in the Company's pending SXB-26 fibromyalgia proof of principle clinical trial) which, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the results or prospects of Xyrem and (2) the approval by the FDA of an ANDA for an AB-rated fomepizole injection, shall each be deemed to be a Material Adverse Effect.

Section 3.2 Capitalization.

(a) The Company is a corporation organized under the laws of the state of Delaware and has authorized 23,477,000 shares of common stock, $0.01 par value per share (the "Company Common Stock"), of which 11,488,024 shares are outstanding as of the date hereof and 14,000 shares of Senior Convertible Preferred Stock, $0.01 par value per share (the "Senior Preferred Stock"), 5,000 shares of Series B Convertible Preferred Stock, $0.01 par value per share (the "Series B Preferred Stock"), 4,000 shares of Series C Convertible Preferred Stock, $0.01 par value per share (the "Series C Preferred Stock") and 1,500,000 shares of Series D Non-Voting Convertible Preferred Stock, $0.01 par value per share (the "Series D Preferred Stock," and together with the Senior Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock, collectively, the "Company Preferred Stock") (the Company Common Stock and the Company Preferred Stock are collectively referred to as the "Company Capital Stock"). As of the date hereof, 8,706 shares of Senior Preferred Stock, which are convertible into 1,069,533 shares of Common Stock, and 4,420 shares of Series B Preferred Stock, which are convertible into 680,000 shares of Common Stock, were issued and outstanding, all of which shares were validly issued and fully paid, nonassessable and free of preemptive rights. As of the date hereof, no shares of Series C Preferred Stock or Series D Preferred Stock were issued and outstanding. As of the date hereof, (i) 3,743,970 shares of Company Common Stock were authorized for issuance under the terms of the Company's 1994 Stock Option Plan and 2004 Stock Incentive Plan (the "Company Stock Option Plans") of which options to purchase 1,726,489 shares of Company Common Stock were granted and are currently outstanding (the "Company Stock Options") at a weighted average exercise price of $9.4179, (ii) there were outstanding warrants (the "Warrants") to purchase up to 15,000 shares of Company Common Stock at an exercise price of $8.51 per share, up to 2,050 shares of Series C Preferred Stock or 315,385 shares of Series D Preferred Stock at an exercise price of $6.50 per share and which are convertible into 315,385 shares of Common Stock, and up to 282,353 shares of Series D Preferred Stock at an exercise price of $4.25 per share and which are convertible into 282,353 shares of Common Stock, and (iii) 200,000 shares of Company Common Stock were authorized for issuance under the Company's Employee Stock Purchase Plan. All shares of Company Common Stock and Company Preferred Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and nonassessable. All dividends on Company Preferred Stock accruing under the Restated Certificate and required to be paid prior to the date hereof have been fully accrued and paid, and the amounts of any dividends that will accrue with respect to the Company Preferred Stock after the date hereof and prior to the Closing Date are set forth in Section 3.2(a) of the Company Disclosure Letter.

(b) Section 3.2(b) of the Company Disclosure Letter sets forth the following information with respect to each Company Stock Option and Warrant outstanding as of the date of this Agreement: (i) the name and address of the optionee or Warrant holder; (ii) the particular plan or agreement pursuant to which such Company Stock Option or Warrant was granted; (iii) the number of shares of Company Common Stock and/or Company Preferred Stock subject to such Company Stock Option or Warrant; (iv) the exercise price of such Company Stock Option or Warrant; (v) the date on which such Company Stock Option or Warrant was granted; (vi) the vesting schedule applicable to such Company Stock Option; (vii) the date on which such Company Stock Option or Warrant expires; and (viii) whether the exercisability of such

Company Stock Option or Warrant will be accelerated in any way by the transactions contemplated by this Agreement (and the extent of any such acceleration). The Company has made available to Buyer and Sub accurate and complete copies of all stock option plans and warrant agreements pursuant to which the Company has granted such Company Stock Options and Warrants that are currently outstanding and the form of all stock option agreements evidencing such Company Stock Options.

(c) Except as set forth in Section 3.2(c) of the Company Disclosure Letter, there are no outstanding subscriptions, options, contracts, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating Company or any Subsidiary of Company to issue additional shares of capital stock of, or other equity interests in, Company or any Subsidiary of Company. Except for the Warrants identified in Section 3.2(a) above, there are no outstanding share appreciation rights or similar rights of Company or any of its Subsidiaries. There are no voting trusts, irrevocable proxies or other agreements or understandings to which Company or any Subsidiary of Company is a party or is bound with respect to the voting of any shares of capital stock of, or other equity interests in, Company or any Subsidiary of Company. Except as set forth in Section 3.2(c) of the Company Disclosure Letter, there are no outstanding contractual obligations of Company or any Subsidiary of Company to repurchase, redeem or otherwise acquire any shares of Company Common Stock or any capital stock of any Subsidiary of Company or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Subsidiary of Company or any other Person. All outstanding shares of Company Common Stock, all outstanding Company Stock Options, and all outstanding shares of capital stock of each Subsidiary of Company have been issued and granted in compliance with (i) all applicable securities Laws and other applicable Laws and regulations and (ii) all requirements set forth in applicable contracts.

(d) No Voting Debt of the Company is issued and outstanding.

Section 3.3 Subsidiaries. Each direct and indirect Subsidiary of the Company is listed in Section 3.3 of the Company Disclosure Letter. Each Subsidiary is duly organized and validly existing under the laws of its jurisdiction of organization and has the requisite power and authority to own, lease and operate its assets and properties and to carry on its business as it is now being conducted. Each Subsidiary of the Company is qualified to transact business, and, where applicable, is in good standing, in each jurisdiction in which the properties owned or leased by it or the nature of the business conducted by it makes such qualification necessary, except in all cases where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All of the outstanding capital shares or other equity interests of each Subsidiary of the Company are validly issued, and where such Subsidiary is a corporation fully paid and nonassessable and, except as set forth in Section 3.3 of the Company Disclosure Letter, are owned directly or indirectly by the Company free and clear of all Liens. Except as set forth in Section 3.3 of the Company Disclosure Letter, there are no subscriptions, options, warrants, voting trusts, proxies or other commitments, understandings, restrictions or arrangements to which the Company or any of its Subsidiaries is a party relating to the issuance, sale, voting or transfer of any capital shares or other equity interests of any Subsidiary of the Company, including any right of conversion or exchange under any outstanding security, instrument or agreement. No

Subsidiaries own any Company Capital Stock or any options, warrants or other rights to purchase, or any security, instrument or other agreement having a right of conversion or exchange into, any Company Capital Stock.

Section 3.4 Certificate of Incorporation and Bylaws. The Company has heretofore furnished to Buyer and Sub a complete and correct copy of the Amended and Restated Certificate of Incorporation of the Company (the "Restated Certificate") and the Amended and Restated Bylaws of the Company (the "Restated Bylaws") or equivalent organizational documents, each as amended to date, of the Company and each Subsidiary. Such certificate of incorporation, bylaws, or equivalent organizational documents are in full force and effect. Neither the Company nor any Subsidiary is in violation of any provisions of its certificate of incorporation, bylaws or equivalent organizational documents.

Section 3.5 Authority, Non-Contravention; Approvals.

(a) The Company has the necessary corporate power and corporate authority to enter into this Agreement and, subject to the adoption of this Agreement by the Required Company Vote, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject to the adoption of this Agreement by the Required Company Vote. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Buyer and Sub, constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except to the extent that the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by principles of equity regarding the availability of remedies or (ii) rules of Law governing specific performance, injunctive relief and other equitable remedies.

(b) The Board of Directors, by resolutions duly adopted by a unanimous vote at a meeting duly called and held and not subsequently rescinded or modified in any way, has duly (i) determined that this Agreement and the Merger are advisable, fair to and in the best interests of the Company and its stockholders, (ii) approved this Agreement, the Voting Agreement and the Merger and for purposes of the DGCL, including without limitation, Section 203 thereof, and (iii) recommended that the stockholders of the Company approve and adopt this Agreement and approve the Merger and directed that this Agreement and the Merger be submitted for consideration by the Company's stockholders at the Company Stockholders Meeting.

(c) The only votes of the holders of any class or series of capital stock of the Company necessary to approve this Agreement, the Merger or any transaction contemplated by this Agreement are (i) the affirmative vote of the holders of a majority of the issued and outstanding Senior Preferred Stock, voting together with the holders of Company Common Stock on an as converted basis, and (ii) the affirmative vote of the holders of a majority of the Senior Preferred Stock issued and outstanding, voting as a separate class, in each case, in favor of the approval and adoption of this Agreement (collectively, the "Required Company Vote").

(d) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the compliance by the Company with any of the provisions hereof will not conflict with or result in any violation or breach of or default (with or without notice or lapse of time, or both) under, or give rise to any right of termination, cancellation or acceleration or require any consent, waiver or approval under, (i) any provision of the organizational documents of the Company or its Subsidiaries, (ii) any Contract to which the Company or any of its Subsidiaries is a party or bound or to which the Company's or any of its Subsidiaries' property or assets are subject or (iii) any applicable provision of any Law by which the Company or its Subsidiaries is bound or to which any of their property or assets is subject, other than in the cases of clauses (ii) and (iii), any such conflicts, violations, breaches or defaults, or failure to obtain consents, waivers or approvals, which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.6 Governmental Approvals. No notice to, filing with, or authorization, registration, consent or approval of any governmental or regulatory authority, agency, department, board, commission, administration or instrumentality, any court, tribunal or arbitrator and any self regulatory organization ("Governmental Authority") on the part of the Company or any Subsidiary of the Company is required in connection with the execution or delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby other than (i) filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act"), or any applicable foreign antitrust statute, law, rule or regulation or any order, decision, injunction, judgment, award or decree ("Law"), (ii) such filings as may be required in any jurisdiction where the Company is qualified or authorized to do business as a foreign corporation in order to maintain such qualification or authorization and (iii) those other notices, filings, authorizations, registrations, consents and approvals that, if they were not obtained or made, would not reasonably be expected to materially affect the ability of the Company to consummate the Merger or to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.7 SEC Documents.

(a) The Company has timely filed with the U.S. Securities and Exchange Commission (the "SEC") all reports, schedules, forms, statements and other documents required to be filed with the SEC by the Company since January 1, 2002 (collectively, the "Company SEC Documents").

(b) As of its respective date, each Company SEC Document complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and, to the extent not included in the Exchange Act or the Securities Act, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), rules and regulations promulgated by the NASD and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Document, and did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the Subsidiaries of the Company is required to file or furnish any statements or reports with the SEC pursuant to Sections 13(a) or 15(d) of the Exchange Act. Except to the extent that information contained in any Company SEC Document has been revised or superseded by a later Company

SEC Document filed with the SEC prior to the date hereof, none of the Company SEC Documents filed with the SEC prior to the date hereof contain any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Except to the extent that information contained in any Company SEC Document has been revised or superseded by a later Company SEC Document filed with the SEC prior to the Closing, none of the Company SEC Documents filed with the SEC after the date hereof contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) The consolidated financial statements of the Company included in the Company SEC Documents (the "Company Financial Statements") comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the financial position of the Company and its Subsidiaries on a consolidated basis as of the dates thereof and the results of their operations and cash flows for the periods shown (subject, in the case of unaudited statements, to normal year-end audit adjustments). Each of the principal executive officer of the Company and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) has made the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to the Company's filings pursuant to the Exchange Act. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(d) The effectiveness of any additional SEC disclosure requirement that, as of the date of this Agreement, has been formally proposed that is not yet in effect, will not lead to any material change in the Company's disclosures as set forth in the Company SEC Documents.

(e) The Company and its Subsidiaries have designed and maintain a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company (A) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure, and (B) has disclosed, based on its most recent evaluation of such disclosure controls and procedures prior to the date hereof, to the Company's auditors and the audit committee of the Company's Board of Directors (1) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Company's ability to record, process, summarize and report financial

information and (2) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. The Company has made available to Buyer and Sub a summary of any such disclosure made by management to the Company's auditors and audit committee since January 1, 2002. The Company has made available to Buyer and Sub all correspondence between the Company and its auditors since January 1, 2002.

Section 3.8 Undisclosed Liabilities; Absence of Certain Changes or Events.

(a) Except as disclosed in the Company SEC Documents, neither the Company nor any of its Subsidiaries has as of the date of this Agreement any liabilities or obligations (whether absolute, accrued, contingent or otherwise) of any nature, except liabilities, obligations or contingencies which (i) are accrued or reserved against in the Company Financial Statements or reflected in the notes thereto, (ii) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (iii) have been discharged or paid in full prior to the date hereof. The Company and its Subsidiaries do not have any Indebtedness, except any Indebtedness that may be incurred after the date hereof and prior to the Effective Time in accordance with Section 5.1(a)(viii).

(b) Except as disclosed in Section 3.8(b) of the Company Disclosure Letter, from January 1, 2005 through the date of this Agreement, neither the Company nor any of its Subsidiaries has (x) declared, set aside or paid to any holder of Company Common Stock or Company Preferred Stock any dividend or distribution payable in cash, stock, property or otherwise, (y) repurchased, redeemed or otherwise acquired from any holder of Company Common Stock or Company Preferred Stock, any shares of Company Common Stock or Company Preferred Stock or shares of capital stock or other equity interests of any Subsidiary of the Company or (z) engaged in any of the actions identified in Section 5.1(a) hereof. Since January 1, 2005, there has not occurred any change, event or effect that has had or would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.9 Litigation. Except as disclosed in the Company SEC Documents filed since January 1, 2005 and prior to the date hereof or as set forth in Section 3.9 of the Company Disclosure Letter, there are no claims, actions, suits, proceedings or investigations pending or, to the Knowledge of the Company, threatened, against or involving the Company or any of its Subsidiaries or any properties or rights of the Company or any of its Subsidiaries or, to the Knowledge of the Company, any directors, officers, employees or consultants of the Company or any of its Subsidiaries, by or before any Governmental Authority or arbitrator which if adversely determined would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in Section 3.9 of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries nor any of their respective properties is subject to any order, judgment, injunction or decree or, to the Knowledge of the Company, any investigation by any Governmental Authority.

Section 3.10 Material Contracts.

(a) Except as set forth in Section 3.10(a) of the Company Disclosure Letter, neither the Company nor any Subsidiary is party to any written or oral binding undertaking,

commitment, note, bond, mortgage, indenture, contract, lease, license, agreement or instrument ("Contract") that is required to be described in or filed as an exhibit to any Company SEC Document that is not so described in or filed as required by the Securities Act or Exchange Act, as the case may be. Except as set forth in Section 3.10(a) of the Company Disclosure Letter (and, solely with respect to Section 3.10(a)(i), except to the extent previously included as exhibits to reports previously filed by the Company with the SEC), neither the Company nor any Subsidiary is party to any of the following (each, together with the Contracts identified in Section 3.10(b) of the Company Disclosure Letter, a "Company Material Contract"):

(i) any Contract that is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC);

(ii) any Contract under which it has outstanding indebtedness for money borrowed or guaranteed indebtedness for money borrowed of any Person;

(iii) any Contract that (A) restricts it from participating or competing in any line of business, market or geographic area, or any therapeutic area, class of drugs, any particular drug or any mechanism of action, (B) restricts the development, manufacture, marketing or distribution of any product; or (C) grants any exclusive rights of development, manufacture, marketing, sale, distribution, importation, exportation or other exclusive rights, rights of refusal, rights of first negotiation or similar rights of any nature to any Person;

(iv) any Contract that would reasonably be expected to prevent, materially delay or materially impede the consummation of any of the transactions contemplated by this Agreement; or

(v) any Contract the termination of which would reasonably be expected to have a Material Adverse Effect on the Company.

A complete and correct copy of each agreement or document required by this Section 3.10(a) to be listed in Section 3.10(a) of the Company Disclosure Letter (including any amendments thereto) has been made available by the Company to Buyer and Sub or filed by the Company as an exhibit to its Company SEC Documents. All Company Material Contracts are in written form.

(b) Section 3.10(b) of the Company Disclosure Letter sets forth a complete and accurate list of all material Contracts to which the Company or any of its Subsidiaries is a party as of the date hereof or by which they are bound relating to the research, development, distribution, training, sale, license, marketing and supply of materials or components for, and manufacturing by third parties of, each Drug Product, and the Company has made available to Buyer true and complete copies of all such Contracts, as currently in effect.

(c) All Company Material Contracts are valid and binding and are in full force and effect and enforceable against the Company or such Subsidiary in accordance with their respective terms, except as to the effect, if any, of (i) applicable bankruptcy or other similar laws affecting the rights of creditors generally, (ii) rules of Law governing specific performance, injunctive relief and other equitable remedies and (iii) to the extent applicable, the enforceability of provisions regarding indemnification in connection with the sale or issuance of securities.

Neither the Company nor any of its Subsidiaries is in material violation or breach of or default under, or has received notice of any material violation or breach of or default under, any such Company Material Contract. To the Knowledge of the Company, no other party to a Company Material Contract is in material violation or breach of or default under any such Company Material Contract.

Section 3.11 Compliance with Laws/Permits.

(a) Neither the Company nor any of its Subsidiaries is in violation, or has violated, any applicable provisions of, or committed or failed to perform any act which, with or without notice, lapse of time or both, would constitute a default under the provisions of, (i) any Laws applicable to the Company or its Subsidiaries or any property or asset of the Company or its Subsidiaries, or (ii) any Company Permit, except for any violations which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as described in Section 3.11(a) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has received any written notification from any Governmental Authority asserting that the Company or any of its Subsidiaries has failed to comply, or is not in compliance, with applicable Law and to the Company's Knowledge, no investigation or review of the Company or any of its Subsidiaries by any Governmental Authority is pending, and to the Company's Knowledge, no such notification, investigation or review has been threatened in writing against the Company or any of its Subsidiaries and no reasonable basis therefor exists, except as would not, in each event, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Company and its Subsidiaries have all Permits required in connection with the operation of their respective businesses (collectively, "Company Permits"). As of the date hereof, no suspension or cancellation of any Company Permit is pending or, to the Knowledge of the Company, threatened. Since January 1, 2005, neither the Company nor any of its Subsidiaries has (i) been denied or failed to receive or renew any Permit that it had sought that would, if currently possessed by the Company or a Subsidiary of the Company, be reasonably likely to be material to the operation of the business of the Company and its Subsidiaries, taken as a whole, or (ii) had any Permit suspended or cancelled or failed to be renewed that would, if currently possessed by the Company or a Subsidiary of the Company, be reasonably likely to be material to the operation of the business of the Company and its Subsidiaries, taken as a whole.

Section 3.12 Taxes.

Except as set forth in Section 3.12 of the Company Disclosure Letter:

(a) Each of the Company and its Subsidiaries has timely filed all Tax returns required to be filed by it, and has paid, collected or withheld all Taxes required to be paid, collected or withheld, except Taxes that are immaterial in amount. All such Tax returns are true, correct and complete in all material respects. The current liability accruals for Taxes with respect to the Company and its Subsidiaries reflected in the balance sheet included in the most recent Company SEC Documents are adequate to cover material Tax liabilities accruing through the date of such Company SEC Documents. Neither the Company nor any Subsidiary has requested an extension of time within which to file any Tax Return or been granted any extension or waiver of the statute of limitations period applicable to any Tax Return that remains in effect.

(b) There are no audits, examinations, claims or assessments pending against the Company or any Subsidiary with respect to Taxes, and neither the Company nor any Subsidiary has been notified in writing of any proposed Tax audits, claims or assessments against the Company or any Subsidiary.

(c) There are no waivers or extensions of any applicable statute of limitations to assess any amount of Taxes with respect to the Company or any Subsidiary.

(d) There are no Liens for any Tax upon any asset of the Company or any Subsidiary, except for Liens for Taxes that are not yet due and payable.

(e) The Company will not be precluded by Section 280G of the Code from deducting for federal income Tax purposes any payment to be made either alone or in conjunction with any other payment to any employee, former employee, director, or former director of the Company as a result of or in connection with the transactions contemplated by this Agreement.

(f) Neither the Company nor any Subsidiary is a party to any Tax sharing, Tax indemnity or Tax allocation agreement, and neither the Company nor any Subsidiary has any continuing obligations or Liabilities under any such agreement.

(g) Neither the Company nor any Subsidiary has been a member of an affiliated or other group filing a consolidated, combined, unitary or similar Tax Return (other than a group the common parent of which is the Company). Neither the Company nor any Subsidiary has any liability for Taxes of any person (other than the Company or any Subsidiary) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract, or otherwise.

(h) During the five-year period ending on the date hereof, neither the Company nor any Subsidiary was a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code. Neither the Company nor any Subsidiary has participated in any "listed transaction" as defined in section 1.6011-4(b)(2) or section 301.6111-2(b)(2) of the Treasury Regulations.

Section 3.13 Related Party Interests and Transactions.

(a) For purposes of this Section 3.13, the term "Affiliated Person" means (i) any holder of more than 5% of the Company Common Stock or Company Preferred Stock, (ii) any director or executive officer of the Company, (iii) any member of the immediate family of any of such Persons, or (iv) any Person that is controlled by any of the foregoing.

(b) Except as set forth in the Company SEC Documents filed prior to the date of this Agreement, or as disclosed in Section 3.13 of the Company Disclosure Letter, no Affiliated Person is presently a party to any agreement with the Company or any of its Subsidiaries of the type or amount required to be disclosed pursuant to Item 404 of Regulation S-K.

(c) The Company and its Subsidiaries do not have any liabilities or obligations, actual or contingent, to Chronimed, Inc., or any of its Affiliates under any Contract or otherwise.

Section 3.14 Intellectual Property.

(a) Except as set forth in Section 3.14(a) of the Company Disclosure Letter, the Company and each of its Subsidiaries is the sole owner of, or is validly licensed or otherwise has the right to use (without any obligation to make any material fixed or contingent payments, including royalty payments) all patents, patent applications, trademarks, trademark applications, registrations and other rights, trade names and trade dress, trade name rights, domain names, service marks, service mark rights, service names, copyrights, copyright applications and registrations, technical information including engineering, production and other designs, drawings, specifications, formulae, technology, computer and electronic data processing programs and software, inventions, processes, trade secrets, know–how, confidential information and other proprietary property, rights and interests and documentation and all of the goodwill associated with any of the foregoing (collectively, "Intellectual Property Rights") which are material to the conduct of its business, and the Company's and its Subsidiaries ownership interest or licensed rights in such Intellectual Property Rights are free and clear of all Liens. Section 3.14(a) of the Company Disclosure Letter sets forth a list of all agreements under which the Company or any of its Subsidiaries is obligated to make payments to third parties for use of any Intellectual Property Rights with respect to the commercialization of any products that are, as of the date hereof, being sold, manufactured by or under development by the Company or any of its Subsidiaries. The execution, delivery or performance of the transactions contemplated by this Agreement will not conflict with, alter or otherwise impair any of the Company's or its Subsidiaries Intellectual Property Rights.

(b) No claims are pending or, to the Knowledge of the Company, threatened, that the Company or any of its Subsidiaries has infringed, is infringing or has misappropriated the rights of any Person with regard to any Intellectual Property Right or any products that are, as of the date hereof, being sold, manufactured by or on behalf of the Company or any of its Subsidiaries. To the knowledge of the Company, the Company or its Subsidiaries are not infringing, and have not misappropriated any of the Intellectual Property Rights of any Person. To the Knowledge of the Company, no Person or Persons have infringed, are infringing or have misappropriated the rights of the Company or any of its Subsidiaries with respect to any Intellectual Property Right.

(c) No claims are pending or, to the Knowledge of the Company, threatened with regard to the Company's or any of its Subsidiaries' ownership of, license to or the validity or enforceability of any of its Intellectual Property Rights. Except as set forth in Section 3.14(c) of the Company Disclosure Letter, all employees of the Company or its Subsidiaries, and all consultants and independent contractors retained by the Company or its Subsidiaries, in each case who have contributed to or participated in the conception and development of any of the Intellectual Property Rights of the Company or its Subsidiaries (other than those Intellectual Property Rights licensed to the Company or its Subsidiaries by third parties), have executed and delivered to the Company or such Subsidiary a proprietary information agreement and appropriate instruments of assignment in the forms provided to Buyer that have conveyed to the Company or its Subsidiary full, effective, exclusive and original ownership to such Intellectual Property Rights.

(d) Section 3.14(d) of the Company Disclosure Letter sets forth, as of the date hereof, a complete and accurate list of all patents, registered trademarks and applications therefor owned by or licensed to the Company or any of its Subsidiaries, all of which patents, trademarks and applications identified therein as owned by the Company or its Subsidiaries are owned free and clear of all material Liens. The patent applications listed in Section 3.14(d) of the Company Disclosure Letter are pending and have not been abandoned, and have been and continue to be prosecuted by patent counsel. All patents, trademarks and applications therefor owned by or licensed to the Company or any of its Subsidiaries have been duly registered and/or filed with or issued by each appropriate Governmental Authority in the jurisdiction indicated in the Company Disclosure Letter, all necessary affidavits of continuing use have been filed, and all necessary maintenance fees have been timely paid to continue all such rights in effect. None of the patents or patent applications listed in Section 3.14(d) of the Company Disclosure Letter has expired or has been declared invalid, in whole or in part, by any Governmental Authority, and to the Knowledge of the Company, there are no published patents, patent applications, articles or other prior art references or any other material facts that should have been disclosed to the relevant Governmental Authority by the Company or its patent counsel, or which would reasonably be expected to prevent any such patent application from issuing, or which could otherwise form a basis for a finding that such patents, if issued, would not be valid and enforceable in accordance with applicable regulations. With respect to the patents and patent applications listed in Section 3.14(d) of the Company Disclosure Letter: (i) there are no ongoing interferences, oppositions, reissues, reexaminations or other proceedings involving any such patents or patent application, including ex parte and post–grant proceedings, in the United States Patent and Trademark Office or in any foreign patent office or similar administrative agency, (ii) to the Knowledge of the Company, such patents and patent applications properly identify each and every inventor of the claims thereof as determined in accordance with the laws of the jurisdiction in which such patent is issued or such patent application is pending, and (iii) each inventor named on such patents and patent applications has executed an agreement assigning his, her or its entire right, title and interest in and to such patent or patent application, and the inventions embodied and claimed therein, to the Company or any of its Subsidiaries. Furthermore, each such inventor has executed an agreement with the Company or any of its Subsidiaries obligating such inventor to assign the entire right, title and interest in and to such patent or patent application, and inventions embodied and claimed therein, to the Company or any of its Subsidiaries, and, to the Knowledge of the Company, no such inventor has any contractual or other obligation that would preclude any such assignment or otherwise conflict with the obligations of such inventor to the Company or any of its Subsidiaries under such agreement with the Company or such Subsidiary.

(e) Section 3.14(e)(i) of the Company Disclosure Letter sets forth a complete and accurate list of all options, rights, licenses or interests of any kind relating to Intellectual Property Rights granted to the Company or any of its Subsidiaries (other than software licenses for generally available software), or granted by the Company or any of its Subsidiaries to any other Person. Section 3.14(e)(ii) of the Company Disclosure Letter sets forth a complete and accurate list of all options, rights, licenses or interests of any kind relating to Intellectual Property Rights granted by the Company or any of its Subsidiaries or with respect to the marketing or distribution thereof.

(f) No material trade secret of the Company or any of its Subsidiaries has been published or disclosed by the Company or any of its Subsidiaries or, to the Knowledge of the Company, by any other Person to any Person except pursuant to licenses or contracts requiring such other Persons to keep such trade secrets confidential. The Company's Intellectual Property Rights have been maintained in confidence in accordance with protection procedures customarily used in the industries of the Company and its Subsidiaries to protect rights of like importance.

Section 3.15 Regulatory Compliance.

(a) As to each product (each, a "Drug Product") that is being developed, manufactured, tested, distributed and/or marketed by the Company or any of its Subsidiaries as of the date hereof, such Drug Product is being developed, manufactured, tested, distributed and/or marketed by the Company and its Subsidiaries in compliance with all applicable requirements under the FDCA, the FDA regulations promulgated thereunder, and under similar Laws (including in any foreign jurisdiction), including those relating to investigational use, premarket clearance, good manufacturing practices, labeling, advertising, record keeping, filing of reports and security, except for failures to be in compliance which, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect. None of the Company or any of its Subsidiaries has received any notice or other communication from the FDA or any other Governmental Authority (A) contesting the premarket clearance or approval of, or, the uses of or the labeling and promotion of, any of the Company's products or (B) otherwise alleging any violation of any Law by the Company or any of its Subsidiaries.

(b) Section 3.15(b) of the Company Disclosure Letter sets forth each application with respect to a Drug Product that has been submitted for approval by the Company or its Subsidiaries in the United States under the FDA regulations or outside of the United States under similar laws of other Governmental Authorities.

(c) No Drug Products have been recalled, withdrawn, suspended or discontinued by the Company or any of its Subsidiaries in the United States or outside the United States (whether voluntarily or otherwise) by order of the FDA or any other Governmental Authority. No proceedings in the United States and outside of the United States of which the Company has Knowledge (whether completed or pending) seeking the recall, withdrawal, suspension or seizure of any Drug Product are pending against the Company or any of its Subsidiaries, nor have any such proceedings been pending at any prior time.

(d) None of the Company, any of its Subsidiaries or, to the Knowledge of the Company, any of their respective officers, employees or agents has made an untrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991), or for any other Governmental Authority to invoke any similar policy. None of the Company, any of its Subsidiaries or, to the Knowledge of the Company, any of their respective officers, employees or agents, has been

convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. sec. 335a(a) or any similar Law or authorized by 21 U.S.C. sec. 335a(b) or any similar Law.

(e) None of the Company or any of its Subsidiaries has received any notice or has any Knowledge that the FDA or any other Governmental Authority (i) has commenced, or threatened to initiate, any action to withdraw its approval or request the recall of any product of the Company or any of its Subsidiaries, (ii) has commenced, or threatened to initiate, any action to enjoin at any facility at which any product of the Company or any of its Subsidiaries is produced or (iii) has requested or is otherwise considering any change in the distribution procedures for Xyrem since October 1, 2004. Section 3.15(e) of the Company Disclosure Letter identifies any FDA form 483s and any FDA or similar foreign regulatory warning letters received by the Company or its Subsidiaries since January 1, 2004. The Company has made available to Buyer a list of all correspondence between the FDA and the Company or its Subsidiaries with respect to Xyrem, and the dates of all FDA meetings held with respect to Xyrem since its approval on July 17, 2002, and the Company has provided Buyer with true and complete copies of the FDA minutes with respect to all such FDA meetings after such date. Section 3.15(e) of the Company Disclosure Letter lists any "serious adverse events", as defined in the applicable FDA regulations, that have been reported to the FDA since January 1, 2004 with respect to Xyrem.

Section 3.16 Properties. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, the Company or one of its Subsidiaries (a) has good and valid title to all the properties and assets reflected in the latest audited balance sheet included in the Company SEC Documents as being owned by the Company or one of its Subsidiaries or acquired after the date thereof that are material to the Company's business on a consolidated basis (except properties sold or otherwise disposed of since the date thereof in the ordinary course of business), free and clear of all Liens, except Permitted Liens or such other imperfections or irregularities of title, easements, covenants, rights-of-way and other Liens as do not materially impair the continued use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties, and (b) is the lessee of all leasehold estates reflected in the latest audited financial statements included in the Company SEC Documents or acquired after the date thereof and is in possession of the properties purported to be leased thereunder, and each such lease is valid without material default thereunder by the lessee or, to the Company's Knowledge, the lessor.

Section 3.17 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (a) the operations of the Company and its Subsidiaries are, and at all times have been, in compliance with all applicable Environmental Laws, including possession and compliance with the terms of all Company Permits required by Environmental Laws, (b) there are no pending or, to the Knowledge of the Company, threatened, suits, actions, investigations or proceedings under or pursuant to Environmental Laws against the Company or any of its Subsidiaries or involving any real property currently or, to the Knowledge of the Company, formerly owned, operated or leased or other sites at which Hazardous Materials were disposed of, or allegedly disposed of, by the Company or any of its Subsidiaries, (c) to the Company's Knowledge, the Company and its

Subsidiaries have received no written allegations of any liabilities, obligations or contingencies under any Environment Law and the Company has no Knowledge or any pending or threatened such allegations, and (d) neither the Company nor any of its Subsidiaries has generated, transported, treated, stored, installed, disposed of or released any Hazardous Materials in violation of, or in a manner that would reasonably be expected to give rise to liability to the Company or its Subsidiaries under, any Environmental Laws.

Section 3.18 Employment.

(a) The Company, each of its Subsidiaries and each ERISA Affiliate is in compliance with all applicable Law and Contracts relating to each Company Benefit Arrangement, employment, employment practices, immigration, wages, hours, and terms and conditions of employment, including employee compensation matters, except where the failure to so comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) No union organizing effort with respect to employees of the Company or any of its Subsidiaries is underway and there is no labor strike, dispute, slowdown, stoppage or lockout actually pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries. Except as set forth in Section 3.18(b) of the Company Disclosure Letter, there are no controversies pending or, to the Knowledge of the Company, threatened, between the Company or any Subsidiary and any of their respective employees which have, or would reasonably be expected to result in, an action, suit, proceeding, claim, arbitration or investigation before any Governmental Authority.

(c) To the Knowledge of the Company, neither the Company, its Subsidiaries, nor any ERISA Affiliate has at any time since the enactment of ERISA, sponsored a "multiemployer plan" as defined in Section 3(37) of ERISA. Neither the Company nor any Subsidiary or current or former ERISA Affiliate currently maintains, sponsors, participates in or contributes to, nor has it ever maintained, established, sponsored, participated in, or contributed to, any pension plan (within the meaning of Section 3(2) of ERISA) that is subject to Title IV of ERISA. To the Knowledge of the Company, no "accumulated funding deficiency" (as such term is defined in Section 302 of ERISA and Section 412 of the Code) has occurred with respect to any Company Benefit Arrangement that is not subject to Title IV of ERISA.

(d) With respect to the Company, any of its Subsidiaries and any ERISA Affiliate, the Company has made available to Buyer (i) all employee benefit plans within the meaning of Section 3(3) of ERISA currently contributed to, sponsored by or maintained by the Company or any of its Subsidiaries, (ii) each outstanding loan from the Company, any of its Subsidiaries or an ERISA Affiliate to an employee, (iii) all stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Section 125 of the Code), dependent care (Section 129 of the Code), life insurance or accident insurance plans, programs or arrangements currently contributed to, sponsored by or maintained by the Company or any of its Subsidiaries, (iv) all bonus, pension, profit sharing, savings, retirement, deferred compensation or incentive plans, programs or arrangements currently contributed to, sponsored by or maintained by the Company or any of its Subsidiaries, (v) other fringe or employee benefit plans, programs or

arrangements that apply to senior management and that do not generally apply to all employees that are currently contributed to, sponsored by or maintained by the Company or any of its Subsidiaries, and (vi) all employment or service agreements with a current service provider (except for offer letters providing for at-will employment which do not provide for severance, acceleration or post-termination benefits except as required by the law or applicable custom or rule of the relevant jurisdiction outside of the United States), and (vii) all change of control agreements or severance agreements or plans, written or otherwise, for the benefit of, or relating to, any current director, officer or employee of the Company (collectively, the "Company Benefit Arrangements").

(e) Except as set forth in Section 3.18(e) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is a party to any Contract with any director, officer or employee of the Company (i) the benefits of which are contingent, or the terms of which are materially altered as a result of the execution of this Agreement, stockholder approval of this Agreement or the transactions contemplated by this Agreement (whether alone or in connection with any subsequent event(s)) (including any single or double-trigger severance), or (ii) providing any fixed term of employment. No Company Benefit Arrangement will provide benefits that shall be increased, or the vesting of benefits of which shall be accelerated or the value of any of the benefits of which shall be calculated as a result of the execution of this Agreement, stockholder approval of this Agreement, or the transactions contemplated by this Agreement (whether alone or in connection with any subsequent event(s)). To the Knowledge of the Company, there is no agreement, plan, arrangement or other Contract covering any current or former employee or consultant of the Company or any of its Subsidiaries or ERISA Affiliate to which the Company and/or any such Subsidiary is a party or by which the Company and/or any such Subsidiary is bound that, considered individually or considered collectively with any other such agreements, plans, arrangements or other Contracts, will, or would reasonably be expected to, as a result of the execution of this Agreement, stockholder approval of this Agreement, or the transaction contemplated by this Agreement (or any event subsequent to and in combination with the Merger), result in a payment that would reasonably be expected to be characterized as a "parachute payment" within the meaning of Section 280G of the Code.

Section 3.19 Suppliers. Section 3.19 of the Company Disclosure Letter sets forth a true and complete list of all Contracts to which the Company or its Subsidiaries is a party as of the date hereof or with respect to which the Company or its Subsidiaries has any ongoing liabilities, obligations or commitments as of the date hereof, in each case relating to the research, development, distribution, training, sale, license, marketing and supply of components for, and the manufacturing by any third parties of, Xyrem, Antizol and Cystadane. Except as described in Schedule 3.19 of the Company Disclosure Letter, since January 1, 2004, there has not been (i) any material change in the business relationship of the Company or any of its Subsidiaries with any third party identified in Section 3.19 of the Company Disclosure Letter, including any material dispute between such parties or any actual or threatened termination of such relationship by either party or (ii) any change in any material term (including credit terms) of such Contracts or related arrangements with any such party. The Company has made available to Buyer true and complete copies of all such Contracts.

Section 3.20 Insurance. Section 3.20 of the Company Disclosure Letter identifies all material fire and casualty, general liability, products liability, business interruption or other

insurance policies maintained by the Company and any of its Subsidiaries. Such policies are in full force and effect and neither the Company nor any of its Subsidiaries is delinquent in the payment of any premiums thereon, and no notice of cancellation or termination has been received with respect to any such policy. True and complete copies of all such policies have been delivered or made available to Buyer.

Section 3.21 State Takeover Statutes. No "fair price," "moratorium," "control share acquisition," "affiliate transaction," "business combination" or other similar anti-takeover statute or regulation enacted under any state Law or foreign Law (a "Takeover Statute") is applicable to the Merger or Voting Agreement, including, without limitation, any provision of the DGCL, after giving effect to the actions of the Board of Directors of the Company as described in Section 3.5(b). Neither the Company nor any of its Subsidiaries is a party to or otherwise bound by any rights agreement or "poison pill" anti-takeover plan.

Section 3.22 Brokers. No broker, finder, investment banker or other Person (other than Banc of America Securities LLC) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of the Company or any of its Subsidiaries. The Company has heretofore furnished to Buyer and Sub a complete and correct copy of all agreements between the Company or any of its Subsidiaries and Banc of America Securities LLC pursuant to which such firm would be entitled to payment relating to the transactions contemplated by this Agreement. The Company has provided Buyer with a good faith estimate of the Company's transaction expenses incurred to date with respect to the sale of the Company.

Section 3.23 Fairness Opinion. Prior to or concurrently with the execution of this Agreement, the Company's Board of Directors has received from its financial advisors, Banc of America Securities LLC, a written opinion addressed to it for inclusion in the Proxy Statement to the effect that the Merger Consideration proposed to be received by the holders of Company Common Stock, other than the holders of Company Common Stock party to the Voting Agreement, is fair from a financial point of view to such holders of Company Common Stock.

Section 3.24 Information Supplied. None of the information supplied or to be supplied by the Company for inclusion or incorporation by reference in the Proxy Statement or any Exchange Act filings will, at the time such Exchange Act filings are made with the SEC, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. No representation or warranty is made by the Company with respect to statements made or incorporated by reference therein based on information supplied by Buyer or Sub for inclusion or incorporation by reference in the Proxy Statement or any Exchange Act filings.

Section 3.25 Fomepizole Injection. The Company is not aware of the filing with the FDA by any third party of an ANDA for a fomepizole injection.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES
OF BUYER AND SUB

Buyer and Sub each hereby, jointly and severally, represents and warrant to the Company, except as set forth in a disclosure letter (the "Buyer Disclosure Letter") delivered to the Company on the date of this Agreement (which disclosure letter shall be arranged in sections corresponding to the numbered and lettered sections of this Article IV, and any information disclosed in any such section of the disclosure letter shall be deemed to be disclosed only for purposes of the corresponding section of this Article IV, unless it is readily apparent on the face thereof that the disclosure contained in such section of the disclosure letter contains enough information regarding the subject matter of other representations and warranties contained in this Article IV as to clearly qualify or otherwise clearly apply to such other representations and warranties), as follows:

Section 4.1 Organization, Standing and Power. Each of Buyer and Sub is duly organized and validly existing under the laws of the jurisdiction of its organization and has the requisite corporate power and authority to carry on its business as it is now being conducted. Each of Buyer and Sub has delivered to the Company true and complete copies of its certificate of incorporation (and all amendments thereto) and by-laws (as currently in effect).

Section 4.2 Authority; Binding Agreement. Each of Buyer and Sub has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized on the part of Buyer and Sub and, other than consents previously obtained, no other proceedings on the part of Buyer and Sub are necessary to authorize the execution and delivery of this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and Sub and, assuming the due authorization, execution and delivery hereof by the Company, constitutes the legal, valid and binding obligation of each of Buyer and Sub, enforceable against Buyer and Sub in accordance with its terms, except to the extent that enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by principles of equity regarding the availability of remedies.

Section 4.3 Non-Contravention. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the compliance by Buyer and Sub with any of the provisions hereof will not conflict with or result in any violation or breach of or default (with or without notice or lapse of time, or both) under, or give rise to any right of termination, cancellation or acceleration or require any consent, waiver or approval (other than consents, waivers or approvals that have already been obtained) under, (i) any provision of the organizational documents of Buyer or Sub, (ii) any Contract to which Buyer or Sub is a party, or is bound or to which any of Buyer's or Sub's property or assets is subject or (iii) any applicable provision of any Law by which Buyer or Sub is bound or to which any of their property or assets is subject, other than in the cases of clauses (ii) and (iii), any such conflicts, violations, breaches or defaults, or failure to obtain consents, waivers or approvals, which, individually or in the aggregate, would not reasonably be expected to have a Buyer Material Adverse Effect. As used herein, "Buyer Material Adverse Effect" shall mean a materially adverse effect of the ability of Buyer or Sub to consummate the Merger.

Section 4.4 No Consents. Except for (i) filing and recordation of appropriate merger documents as required by the DGCL, (ii) filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the HSR Act, and (iii) filings and approvals set forth in Schedule 4.4, no notice to, filing with, or authorization, registration, consent or approval of any nation or government, any state or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any Governmental Authority or other Person is necessary for the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby by Buyer or Sub, except as would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

Section 4.5 Litigation. Neither Buyer nor Sub is party to any litigation or threatened litigation which would reasonably be expected to affect or prohibit the consummation of the transactions contemplated hereby.

Section 4.6 Ownership of Sub; No Prior Activities. Sub is a direct wholly owned subsidiary of Buyer. Sub has not conducted any activities other than in connection with the organization of Sub, the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby. Sub has no Subsidiaries.

Section 4.7 Brokers. Other than fees and commissions which would not be borne by the Company in the event the Closing does not occur, no broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of Buyer or Sub.

Section 4.8 Information Supplied. None of the information supplied or to be supplied by Buyer or Sub to the Company for inclusion or incorporation by reference in the Proxy Statement or any other Exchange Act filings to be made by the Company in connection with the transactions contemplated by this Agreement will, at the time such Exchange Act filings are made with the SEC, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. No representation or warranty is made by Buyer or Sub with respect to statements made or incorporated by reference therein based on information supplied by the Company for inclusion or incorporation by reference in any Exchange Act filings.

Section 4.9 Financing; Adequacy of Funds.

(a) Buyer and Sub have received a commitment letter (the "Commitment Letter") with respect to a financing arrangement to provide funds for a portion of the Merger Consideration (the "Financing"), a copy of which has been delivered to the Company. Buyer and Sub collectively will have at the Effective Time, sufficient funds, assuming the receipt of the funds in the Financing, to pay the Merger Consideration for all outstanding shares of Company Capital Stock pursuant to this Agreement and to perform Buyer's and Sub's obligations under this Agreement.

(b) Stockholders of Buyer holding the requisite number of the outstanding shares of capital stock of the Company have consented to the Financing on the terms provided in the Commitment Letter and the making of a capital call under the terms of the Company's Preferred Stock Purchase Agreement dated January 27, 2004 in an amount which, together with the funds to be received in the Financing as described in Section 4.9(a) above, will be sufficient for Buyer and Sub to pay the Merger Consideration for all outstanding shares of Company Capital Stock pursuant to this Agreement and to perform Buyer's and Sub's obligations under this Agreement, and which amount in any event shall be at least equal to the dollar amount set forth on Section 4.9(b) of the Buyer Disclosure Letter.

Section 4.10 No Buyer Vote Required. No vote or other action of the stockholders of Buyer is required by Law, Buyer's Certificate of Incorporation or Buyer's By-laws or otherwise in order for Buyer and Sub to consummate the Merger and the transactions contemplated hereby other than such affirmative vote of the stockholders of Buyer as has already been obtained.

Section 4.11 Fomepizole Injection. Buyer is not aware of the filing with the FDA by any Third Party of an ANDA for a fomepizole injection.

ARTICLE V
COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 5.1 Conduct of Business by the Company Pending the Merger.

(a) Except for matters set forth in Section 5.1(a) of the Company Disclosure Letter or otherwise expressly permitted by this Agreement, from the date of this Agreement to the Closing Date (the "Pre-Closing Period"), the Company shall, and shall cause each of its Subsidiaries to, conduct its business in the usual, regular and ordinary course in substantially the same manner as previously conducted, to pay its debts, file its Tax Returns and pay its Taxes, in each case when due (taking into account any applicable extensions), to continue to make maintenance capital expenditures to the extent set forth in Section 5.1(a) of the Company Disclosure Letter, to market and promote its business in the ordinary course of business consistent with past practices and use its commercially reasonable best efforts to preserve its current business organization, assets and technology, keep available the services of its current officers and employees and keep its relationships with customers, collaborators, suppliers, licensors, licensees, distributors and others having business dealings with them. In addition, and without limiting the generality of the foregoing, except for matters set forth in Section 5.1(a) of the Company Disclosure Letter or otherwise contemplated by this Agreement, during the Pre-Closing Period, Company shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of Buyer and Sub:

(i) amend its Restated Certificate or Restated Bylaws or similar organizational documents or change the number of directors constituting its entire board of directors;

(ii)(I)(A) declare, set aside or pay any dividend or other distribution payable in cash, stock or property with respect to its capital stock or other equity interests, except that (1) the Company shall be permitted to pay dividends to the holders of Preferred Stock in accordance with the Company's Certificate of Incorporation (provided, however, that such dividends shall be paid solely in cash if so requested in writing by Buyer), and (2) a wholly owned Subsidiary of Company may declare and pay a dividend or make advances to its parent or Company or (B) redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock or other securities; (II) issue, sell, pledge, dispose of or encumber any (A) additional shares of its capital stock or other equity interests, (B) securities convertible into or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock or other equity interests, or (C) of its other securities, other than shares of Company Common Stock or Company Preferred Stock issued upon the exercise of any Options, Warrants or Company Preferred Stock outstanding on the date hereof in accordance with the terms thereof, as the case may be, as in effect on the date hereof; or (III) split, combine or reclassify any of its outstanding capital stock or other equity interests or amend the terms of any rights, warrants or options to acquire its capital stock or other securities;

(iii) acquire or agree to acquire (A) by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof (including entities which are Subsidiaries) or (B) any assets, including real estate, in an amount exceeding $5,000 individually or $25,000 in the aggregate, except purchases of assets, including without limitation, inventory, equipment and supplies in the ordinary course of business consistent with past practice;

(iv)(A) sell, lease, encumber or otherwise dispose of any material assets or rights other than (1) products and inventory in the ordinary course of business consistent with past practice, (2) equipment and property no longer used in the operation of the Company's business, or (3) assets related to discontinued operations or (B) grant or suffer any Liens other than Permitted Liens on any of their assets or rights other than in the ordinary course of business consistent with past practice;

(v)(A) amend, modify or terminate any Company Material Contract, waive, release or assign any material rights, claims or benefits thereunder or enter into any new Contract which would be a Company Material Contract, (B) amend, modify or terminate any Contract with a material manufacturer or supplier of materials, components or services for Xyrem, Antizol and Cystadane products or components, or waive, release or assign any material rights, claims or benefits thereunder, (C) enter into any new Contract with any Person (other than the FDA) with regards to or relating to Xyrem, (D) make any agreements with the FDA concerning Xyrem, provided that Buyer's consent with respect to the foregoing shall not be unreasonably withheld, or (E) sell, transfer or license to any Person or otherwise extend, amend, or modify any rights to the Intellectual Property Rights of the Company or its Subsidiaries;

(vi)(A) enter into any employment or severance agreement with or grant any severance or termination pay to any officer, director or employee of Company or any Subsidiary of the Company; or (B) hire or agree to hire any new or additional employees or executive officers;

(vii) except as required to comply with applicable Law or as required by the terms of this Agreement, (A) adopt, enter into, terminate, amend or increase the amount or accelerate the payment or vesting of any benefit or award or amount payable under any Company Benefit Plan or other arrangement for the current or future benefit or welfare of any director, executive officer or current or former employee, (B) increase in any manner the compensation or fringe benefits of, or pay any bonus to, any director, officer or, other than in the ordinary course of business consistent with past practice, employee, (C) pay any benefit not provided for under any Company Benefit Plan or adopt any new Company Benefit Plan or benefit, (D) grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or Company Benefit Plan (including the grant of stock options except for grants set forth in Section 5.1(a)(vii) of the Company Disclosure Letter), stock appreciation rights, stock based or stock related awards, performance units or restricted stock, or the removal of existing restrictions in any Company Benefit Plans or agreements or awards made thereunder) or (E) take any action to fund or in any other way secure the payment of compensation or benefits under any employee plan, agreement, contract, arrangement or Company Benefit Plan;

(viii)(A) incur or assume any indebtedness for borrowed money (whether long-term or short-term); (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person; (C) make any loans, advances or capital contributions to, or investments in, any other Person (other than to wholly owned Subsidiaries or customary loans or advances to employees for travel or similar business expenses in accordance with past practice in an amount not exceeding $10,000 individually or $50,000 in the aggregate); or (D) settle or compromise any claim, litigation or other legal proceeding other than in the ordinary course of business, in accordance with past practice, and without admission of liability or pay, discharge or satisfy any other claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of any such other claims, liabilities or obligations for the amounts reserved against in the consolidated financial statements of the Company;

(ix) change any accounting method used by it unless required by GAAP or by applicable Law;

(x)(A) settle or compromise any material Tax liability, (B) amend any material Tax return, (C) enter into or modify any material agreement relating to Taxes, (D) make or change any material Tax election, (E) surrender any right to claim a refund of Taxes, or (F) consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment;

(xi) revalue any assets of the Company, except as required by GAAP or by applicable Law;

(xii) enter into any new line of business or enter into any Contract that restrains, limits or impedes the Company's or any of its Subsidiaries' ability to compete with or conduct any business or line of business;

(xiii) take any action such that (A) the aggregate cash and cash equivalents of the Company and its Subsidiaries on a consolidated basis that would appear on a consolidated balance sheet of the Company prepared in accordance with GAAP as of the Closing Date would be an amount less than $3,000,000 if the Closing Date is on or prior to June 30, 2005 or (B) net current assets on the Closing Date would be less than $1,000,000 (and if the Closing does not occur by June 30, 2005, Buyer and the Company agree to work together in good faith to address the cash requirements of the Company and its Subsidiaries);

(xiv) take or omit to take any action which would make any of the representations or warranties of the Company contained in this Agreement untrue and incorrect in any material respect as of the date when made if such action had then been taken or omitted, or which would reasonably be expected to result in any of the conditions set forth in Article VI hereof not being satisfied; or

(xv) enter into an agreement to do any of the foregoing, or to authorize any of the foregoing.

(b) Advice of Changes; Governmental Filings; Confidentiality. The Company shall confer with Buyer on a regular and frequent basis, report on operational matters and promptly advise Buyer orally and in writing of any change or event having, or that would reasonably be expected to have, a Buyer Material Adverse Effect or Material Adverse Effect, as the case may be, or that would cause or constitute a breach of any of the representations, warranties or covenants of the Company contained herein; provided, however, that with respect to any breach of any representation, warranty or covenant, any noncompliance with the foregoing shall not constitute the failure to be satisfied of a condition set forth in Article VII or give rise to any right of termination under Article VIII unless the underlying breach shall independently constitute such a breach of this Agreement. The Company shall file all reports required to be filed by it (or its Subsidiaries) with the SEC between the date hereof and the Closing Date and shall deliver to Buyer and Sub copies of all such reports promptly after the same are filed. Each of the Company, Buyer and Sub shall have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable Laws relating to the exchange of information, with respect to any filing made with, or written materials submitted to, any third party or any Governmental Authority in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties agrees to act reasonably and as promptly as practicable and all information provided in connection with such obligations shall be subject to the terms of the Confidential Disclosure Agreement, dated December 6, 2004, by and between the Company and Buyer, as amended (the "Confidentiality Agreement"), the terms of which shall survive the termination of this Agreement and continue in full force and effect. Each party agrees that it will consult with the other party with respect to the obtaining of all permits, consents, approvals and authorizations of all third parties and Governmental Authorities necessary or advisable to consummate the transactions contemplated by this Agreement, and each party will keep the other party apprised of the status of matters relating to completion of the transactions contemplated hereby.

(c) Access to Information. The Company shall afford to Buyer, and to Buyer's officers, employees, accountants, counsel, financial advisors and other representatives, reasonable access during normal business hours during the period prior to the earlier of the

Effective Time or the termination of this Agreement to all its properties, books, contracts, commitments, personnel and records and, during such period, the Company shall furnish promptly to Buyer (i) a copy of each report, schedule and other document filed by it during such period pursuant to the requirements of federal or state securities laws and (ii) all other information concerning its business, properties and personnel as Buyer may reasonably request. Except for disclosures expressly permitted by the terms of the Confidentiality Agreement, Buyer shall hold, and shall cause it officers, employees, accountants, counsel, financial advisors and other representatives and Affiliates to hold, all information received from the Company, directly or indirectly, in confidence in accordance with the Confidentiality Agreement. No investigation pursuant to this Section 5.1(c) or information provided or received by any party hereto pursuant to this Agreement will affect any of the representations or warranties of the parties hereto contained in this Agreement or the conditions hereunder to the obligations of the parties hereto.

(d) Stockholder Litigation. The Company shall give the Buyer the opportunity to participate in the defense or settlement of any stockholder litigation against the Company and/or its directors relating to the transactions contemplated by this Agreement; provided, however, that no settlement shall be agreed to by the Company without Buyer's prior written consent, which consent shall not be unreasonably withheld.

(e) Control of Other Party's Business. Nothing contained in this Agreement shall give Buyer or Sub, directly or indirectly, the right to control or direct the operations of the Company prior to the Closing Date. Prior to the Closing Date, each of Buyer, Sub and the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 5.2 No Solicitation.

(a) The Company shall not, nor shall it authorize or permit any of its Subsidiaries or any Representative of, the Company or any of its Subsidiaries to, directly or indirectly (i) solicit, initiate, cause, encourage, or facilitate the making, submission or announcement of any Takeover Proposal, (ii) enter into any letter of intent or similar document or any agreement, contract or commitment (whether or not binding) contemplating, relating to or constituting a Takeover Proposal, other than a confidentiality agreement as permitted below in this paragraph (a), (iii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or would reasonably be likely to lead to, any Takeover Proposal (other than to inform any Person making inquiries of the restrictions set forth in this Section 5.2), (iv) approve, endorse or recommend any Takeover Proposal (except to the extent specifically permitted by Section 5.2(b)) or (v) take any action to render inapplicable or to exempt any Third Party from, any state takeover law or state law that purports to limit or restrict business combinations or the ability to acquire or vote shares of capital stock, including DGCL Section 203. The Company and its Subsidiaries will immediately cease, and will cause its Representatives to cease, any and all existing activities, discussions or negotiations with any third parties conducted heretofore with respect to any Takeover Proposal. Notwithstanding the foregoing, prior to obtaining the Required Company Vote, (A) the Board of Directors may, in response to a Takeover Proposal that it determines is, or could reasonably be likely to lead to, a Superior Proposal that did not result from a breach of this Section 5.2(a) and subject to

compliance with Sections 5.2(c) and (d), to the extent that the Board of Directors determines in good faith (after consultation with outside counsel) that failure to take such action would be inconsistent with its fiduciary duties under applicable Law, (x) furnish information with respect to the Company to the Person making such Takeover Proposal and such Person's Representatives pursuant to a confidentiality agreement having terms at least as restrictive as the terms contained in the Confidentiality Agreement, and subject to simultaneously with furnishing any such information to the Person making such Takeover Proposal furnish such information to Buyer to the extent not previously provided to Buyer and (y) participate in discussions or negotiations with the Person making such Takeover Proposal and its Representatives regarding such Takeover Proposal, provided that in each case the Company shall have complied with the provisions of the following clause (B) with respect to such Takeover Proposal, and (B) the Company shall, promptly after receipt of any Takeover Proposal, any request for nonpublic information or any inquiry relating in any way to any Takeover Proposal (and in any event within 48 hours), (i) provide to Buyer and Sub any and all documentation (including such proposal documents), correspondence, information relating to and substance of discussions and any proposed agreements received by any of the Company, its Subsidiaries, the Principal Company Stockholders or any Representative thereof in connection with any such Takeover Proposal, (ii) inform Buyer and Sub and the Company of the material terms and conditions of such Takeover Proposal and the substance of any discussions relating to such Takeover Proposal, and (iii) keep Buyer and Sub and the Company fully informed of the status, including any change to the details of such Takeover Proposal. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in the preceding sentence by any Representative or Affiliate of the Company, whether such Person is purporting to act on behalf of the Company or otherwise, shall be deemed to be a breach of this Section 5.2(a) by the Company.

(b) Except as set forth in this Section 5.2, neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw or modify, or propose to any Person other than its Representatives, to withdraw or modify, in a manner adverse to Buyer and Sub, the approval or recommendation by the Board of Directors or any such committee of this Agreement or the transactions contemplated hereby, including the Merger, (ii) approve or recommend, or propose to any Person other than its Representatives, to approve or recommend, any Takeover Proposal or (iii) enter into any letter of intent, agreement in principle, heads of agreement, acquisition agreement or similar agreement with respect to any Takeover Proposal; provided, however, that prior to the Required Company Vote, the Board of Directors may withdraw or modify its approval or recommendation of this Agreement or the transactions contemplated hereby, including the Merger, approve or recommend a Superior Proposal, or enter into an agreement with respect to a Superior Proposal, or terminate this Agreement pursuant to Section 8.1(f), in each case if (A) the Company shall have received a Takeover Proposal that constitutes a Superior Proposal which is pending and has not been withdrawn at the time the Company determines to take such action, (B) the Board of Directors shall have determined in good faith, after consultation with outside counsel, that the failure to take any such action would be inconsistent with the Board of Directors' fiduciary duties under applicable Law, (C) at least four (4) business days shall have passed following the delivery to Buyer and Sub of written notice from the Company advising Buyer and Sub that the Board of Directors has received such Takeover Proposal that constitutes a Superior Proposal which it intends to accept, specifying the material terms and conditions of such Superior Proposal (including the identity of the Person making such Superior Proposal and all documents received by the Company or its

Representatives in connection with such Superior Proposal), and, the Company has negotiated with Buyer and Sub (to the extent requested by Buyer or Sub) in good faith during such four (4) business day period with respect to the terms of Buyer and Sub's offer, taking into account the terms and conditions of any revised or new offer that Buyer and Sub have made to the Company which has been received by the Company within such four (4) business day period, the Board of Directors affirms its determination, after consultation with outside counsel, that the failure to take any such action would be inconsistent with the Board of Directors' fiduciary duties under applicable Law, (D) the Company and its Subsidiaries are in compliance with and have not breached the terms of this Section 5.2 and (E) in the case of any action under clause (iii) of the first sentence of this Section 5.2(b), the Company shall (x) prior to such action, terminate this Agreement pursuant to Section 8.1(f) hereof and (y) pay the Termination Fee to the Company in accordance with Section 8.5(a)(i).

(c) In addition to the obligations of the Company set forth in paragraphs (a) and (b) of this Section 5.2, the Company shall promptly advise Buyer and Sub of (i) the receipt by the Company, a Subsidiary of the Company or any of their respective Representatives of (A) any request for information or other inquiry that the Company believes is reasonably likely to lead to a Takeover Proposal or (B) of any Takeover Proposal, (ii) the terms and conditions of any such request, Takeover Proposal or inquiry (including any subsequent amendment or other modification to such terms and conditions) and (iii) the identity of the Person making such request, Takeover Proposal or inquiry. The Company shall promptly keep Buyer and Sub informed in all material respects of the status and details (including amendments or proposed amendments) of any such request, Takeover Proposal or inquiry.

(d) Nothing contained in this Section 5.2 shall prohibit the Company from taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) promulgated under the Exchange Act or Item 1012(a) of Regulation M-A promulgated under the Exchange Act, or making any required factual disclosure to the stockholders of the Company related thereto.

(e) For purposes of this Agreement:

(i) "Representatives" of a Person means such Person's officers, directors, managers (if such Person is a limited liability company), key employees, investment bankers, attorneys, accountants, auditors or other advisors or representatives;

(ii) "Superior Proposal" means any bona fide written offer not solicited by or on behalf of the Company made by a Third Party to consummate a tender offer, exchange offer, merger, recapitalization, reclassification, business combination, consolidation or similar transaction which would result in such Third Party (or in the case of a direct merger between such Third Party and the Company, stockholders of such Third Party) owning, directly or indirectly, more than 50% of the value and voting power of the Company Common Stock then outstanding (or of the surviving entity in a merger), or all or substantially all of the assets of the Company, which the Board of Directors determines in its good faith judgment (following consultation with outside counsel and with a financial advisor of nationally recognized reputation) (i) to be more favorable to the Company's stockholders than the Merger from a financial point of view (taking into account all the terms and conditions or such offer, this

Agreement and any revised or, if applicable, new offer from Buyer and Sub which has been received by the Company) and (ii) to be fully financed, reasonably likely to receive all required government approvals on a timely basis and otherwise reasonably capable of being completed on the terms proposed, taking into account all legal, financial, regulatory and other aspects of the proposal.

(iii) "Takeover Proposal" means any bona fide written proposal or offer, which proposal or offer is specific as to price, from any Third Party relating to, (A) any direct or indirect acquisition or purchase by a Third Party, in one transaction or a series of related transactions, of 25% or more of the aggregate fair value of the assets (including capital stock or other ownership interests in Subsidiaries) of the Company and its Subsidiaries, taken as a whole, immediately prior to such transaction or of shares of Company Common Stock or any other class or series of equity or voting securities of the Company or any of its Subsidiaries representing more than 25% of the total outstanding voting power of the Company, (B) any tender offer or exchange offer or other transaction that if consummated would result in any Third Party beneficially owning outstanding shares of Company Common Stock or any other class or series of equity or voting securities of the Company or any Subsidiary of the Company representing more than 25% of the outstanding voting power of the Company, or (C) any merger, consolidation, business combination, recapitalization, reclassification, share exchange, liquidation, dissolution or similar transaction or series of related transactions involving the Company pursuant to which the stockholders of the Company immediately preceding such transaction hold securities representing less than 75% of the total outstanding voting power of the surviving or resulting entity of such transaction (or parent entity of such surviving or resulting entity), other than the transactions contemplated by this Agreement.

(iv) "Third Party" means a Person (or "group" of Persons (as defined under Section 13(d) of the Exchange Act and the rules and regulations thereunder)) other than Buyer, Sub or any of their respective controlled Affiliates.

Section 5.3 Standstill Agreements. During the period from the date of this Agreement through the Effective Time, the Company agrees it will use its reasonable best efforts to enforce, and will not terminate, amend, modify or waive any provision of, any confidentiality or standstill agreement (or similar agreement) to which it or any of its Subsidiaries is a party.

Section 5.4 Suspension of Stock Purchase Plan. The Company shall amend, effective as of the date hereof, the Company's Employee Stock Purchase Plan to halt purchases under the Plan such that no issuances of any shares of Company Common Stock shall be made following the date of this Agreement.

ARTICLE VI
ADDITIONAL AGREEMENTS

Section 6.1 Stockholders Meeting.

(a) In accordance with the Company's Restated Certificate and Restated Bylaws, the Company shall promptly call, give notice of, convene and hold a meeting of its stockholders as promptly as practicable for the purpose of obtaining the Required Company Vote with respect

to the transactions contemplated by this Agreement (the "Company Stockholders Meeting") and, except as otherwise permitted pursuant to Section 5.2, shall use its reasonable best efforts to obtain from the stockholders of the Company the Required Company Vote, subject to the provisions of Section 5.2(b) permitting the Board of Directors of the Company to withdraw or modify its recommendation under certain specified circumstances and conditions. Without the prior written consent of Buyer, the approval and adoption of this Agreement is the only matter (other than procedural matters) that the Company shall propose to be acted on by its stockholders at the Company Stockholders Meeting. Notwithstanding any change of recommendation that may be made by the Board of Directors in compliance with the terms of Section 5.2, approval and adoption of this Agreement shall be submitted to the Company's stockholders at the Company Stockholders Meeting, and nothing contained herein shall be deemed to relieve the Company of such obligations.

(b) The Company will promptly prepare and file all materials required to be filed under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act") as well as all other applicable state or foreign securities laws, and Buyer and Sub will cooperate with the Company in the preparation of such materials. Such materials shall include a proxy statement in the form mailed by the Company to its respective stockholders, together with any and all amendments or supplements thereto, which materials are herein referred to as the "Proxy Statement." The Company will use its reasonable best efforts to respond promptly to any comments of the SEC with respect to the Proxy Statement, and will cause the Proxy Statement to be mailed to the Company's stockholders as promptly as practicable, and in no event later than the fifth business day following completion of any SEC review of the Proxy Statement. The Proxy Statement shall, except as expressly otherwise permitted by Section 5.2(b), contain the recommendation of the Board of Directors that the Company's stockholders approve the Merger, this Agreement and the other transactions contemplated hereby and thereby, provided, that the Board of Directors may withdraw, modify or change its recommendation of the Merger and this Agreement in accordance with Section 5.2(b) to the extent all requirements thereof are satisfied.

(c) Buyer and Sub will furnish the Company with such information concerning Buyer and its Subsidiaries as is necessary in order to cause the Proxy Statement, insofar as it relates to Buyer and its Subsidiaries, to comply with applicable Law. Buyer and Sub agree to promptly advise the Company if, at any time prior to any meeting of the stockholders of the Company referenced herein, any information provided by them or the Company in the Proxy Statement is or becomes incorrect or incomplete in any material respect and to provide the Company with the information needed to correct such inaccuracy or omission. Buyer and Sub will furnish the Company with such supplemental information as may be necessary in order to cause the Proxy Statement, insofar as it relates to Buyer and Sub or the Company and its Subsidiaries, to comply with applicable Law after the mailing thereof to the stockholders of the Company.

(d) The Company shall make all preliminary filings of the Proxy Statement with the SEC, as promptly as practicable, pursuant to Rule 14a-6 under the Exchange Act.

Section 6.2 Fees and Expenses. Whether or not the Merger is consummated, all fees, costs and expenses incurred in connection with this Agreement in accordance with its terms and the transactions contemplated hereby, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the party incurring such fees, costs and expenses.

Section 6.3 Public Announcements. The parties shall issue a joint initial press release announcing the execution of this Agreement as may be mutually agreed. Thereafter, the parties will consult with one another prior to issuing any press release or otherwise making any public communications in connection with the Merger or the other transactions contemplated by this Agreement and will provide each other with a meaningful opportunity to review and comment upon any such press releases or other public communications, and prior to making any filings with any third party and/or any Governmental Authority with respect to the Merger or the other transactions contemplated by this Agreement, the parties will consult with one another prior to making such filings and will provide each other with a meaningful opportunity to review and comment upon such filings, except as may be required by applicable Law, legal process, court process or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service.

Section 6.4 Approvals and Consents; Reasonable Best Efforts; Cooperation.

(a) From and after the date hereof until the Closing Date, each of Buyer, Sub and the Company shall each use its respective reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things which are, in its judgment, reasonably necessary, proper or advisable under applicable Laws or otherwise to consummate and make effective as expeditiously as practicable, the Merger and the other transactions contemplated by this Agreement, including without limitation, and as applicable, (i) filing as soon as practicable, but in any event within five (5) business days of the date hereof, if required to be filed, a Notification and Report Form under the HSR Act with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice (and filing as soon as practicable any form or report required by any other Governmental Authority relating to antitrust, competition, or trade regulation matters, including without limitation, any relevant foreign antitrust authority), (ii) promptly applying for, diligently pursuing through to completion, and using reasonable best efforts to obtain prior to the Closing Date all consents, approvals, authorizations, permits and clearances of Governmental Authorities and third parties required of it to consummate the Merger, (iii) providing such information and communications to Governmental Authorities as they may reasonably request, (iv) effecting all necessary registrations, filings and submissions and using reasonable best efforts to have lifted any injunction, order or decree of a court or other Governmental Authority of competent jurisdiction or other legal bar to consummation of the Merger or otherwise restraining or prohibiting the consummation thereof (and, in such case, proceeding with the consummation of the Merger as expeditiously as practicable), including through all possible appeals, unless waived by Buyer, Sub and the Company, (v) assisting and cooperating with each other to obtain all permits and clearances of Governmental Authorities that are necessary, and preparing any document or other information reasonably required of it to consummate the Merger, and (vi) executing and delivering any additional certificates, agreements, instruments, reports, schedules, statements, consents, documents and information necessary to consummate the Merger, and fully carrying out the purposes of, this Agreement. Prior to the expiration of the waiting period (and any extensions thereof) applicable to the Merger under the HSR Act, each of Buyer, Sub and the Company agrees that, except as otherwise expressly contemplated by this Agreement, they will

not take any action that would reasonably be expected to materially and adversely affect or materially delay the Closing Date or the ability of any of the parties to satisfy any of the conditions to the Closing Date or to consummate the Merger by reason of any matter related to antitrust, competition or trade regulation.

(b) In furtherance of and without limitation of the foregoing, each of Buyer, Sub and the Company shall (i) respond as promptly as practicable to any reasonable inquiries or requests received from any Governmental Authority for additional information or documentation; (ii) promptly notify the other parties hereto of any written communication to that party or its Affiliates from any Governmental Authority and, subject to applicable Law, permit the other parties to review in advance any proposed written communication to any of the foregoing (and consider in good faith the views of the other parties in connection therewith); and (iii) furnish the other parties with copies of all material correspondence, filings, and communications (and memoranda setting forth the substance thereof) between them and their Affiliates and their respective representatives on the one hand, and any Governmental Authority or their respective staffs on the other hand, with respect to this Agreement and the Merger; all with a view towards the prompt completion of the Merger and the transactions contemplated by this Agreement.

Section 6.5 Indemnification; Directors' and Officers' Insurance.

(a) From and after the Closing Date, the Surviving Corporation shall, to the fullest extent permitted by applicable Law, indemnify, defend and hold harmless, and provide advancement of expenses to, each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer, director or employee of Buyer or the Company or any of their respective Subsidiaries (the "Indemnified Parties") against all losses, claims, damages, costs, expenses, liabilities or judgments or amounts that are paid in settlement of or in connection with any claim, action, suit, proceeding or investigation based in whole or in part on or arising in whole or in part out of the fact that such Person is or was a director, officer or employee of Buyer, the Company or any their respective Subsidiaries, and pertaining to any matter existing or occurring, or any acts or omissions occurring, at or prior to the Closing Date, whether asserted or claimed prior to, or at or after, the Closing Date (including matters, acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby) to the same extent such Persons are indemnified or have the right to advancement of expenses as of the date hereof by Buyer or the Company, as the case may be, under the Company's Restated Certificate, Restated Bylaws or any other written indemnification agreements to which the Company is party, in each case as in effect on the date hereof and in the form provided to Buyer prior to the date hereof.

(b) For a period of six years after the Closing Date, Buyer and Sub shall cause the Surviving Corporation to maintain in effect the current policies of directors' and officers' liability insurance maintained by the Company (provided that the Company may substitute therefor policies with a substantially comparable insurer of at least the same coverage and amounts containing terms and conditions that are no less advantageous to the insured) with respect to claims arising from facts or events that occurred at or before the Closing Date; provided that if the aggregate annual premiums for such policies at any time during such period will exceed 200% of the per annum premium rate paid by the Company and its Subsidiaries as of

the date hereof for such policies, then the Surviving Corporation shall only be required to provide such coverage as will then be available at an annual premium equal to 200% of such rate; and provided further that the requirements of this Section 6.5(b) may at the election of Buyer and Sub be satisfied by the purchase of one or more "tail" policies prior to the Effective Time providing for coverage for an aggregate period of six years after the Effective Time for acts or omissions occurring at or prior to the Effective Time.

(c) The Company shall pay (as incurred) all expenses, including reasonable fees and expenses of counsel, that an Indemnified Party may incur in enforcing the indemnity and other obligations provided for in this Section 6.5.

(d) If, following the Closing Date, the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of the Surviving Corporation or its successors or assigns, as the case may be, shall assume the obligations set forth in this Section 6.5.

(e) The provisions of this Section 6.5(e) are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party, his or her heirs and representatives and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise.

Section 6.6 Communications to Employees. The Company, Buyer and Sub will cooperate with each other with respect to, and endeavor in good faith to agree in advance upon the method and content of, all written or oral communications or disclosure to employees of the Company and any of its Subsidiaries with respect to the Merger and any other transactions contemplated by this Agreement.

Section 6.7 Takeover Statutes. If any Takeover Statute, including, without limitation, Section 203 of the DGCL, is or may become applicable to the Merger or Voting Agreement, the Company, Buyer or Sub, the Board of Directors will grant such approvals, and take such actions as are necessary, so that the transactions contemplated by this Agreement including, without limitation, the Merger, may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of any Takeover Statute on any of the transactions contemplated hereby.

Section 6.8 Employee Benefit Matters.

(a) With respect to each employee benefit plan of Buyer ("Buyer Benefit Plan") in which employees of the Company and its Subsidiaries ("Company Employees") participate after the Effective Time, for purposes of determining vesting and entitlement to benefits, service with the Company (or predecessor employers to the extent the Company provides past service credit) shall be treated as service with Buyer; provided, that such service shall not be recognized to the extent that such recognition would result in a duplication of benefits or to the extent that such service was not recognized under the corresponding Company Plan. To the extent required

by applicable Law, Buyer shall cause any and all pre-existing condition (or actively at work or similar) limitations, eligibility waiting periods and evidence of insurability requirements under Buyer Benefit Plans to be waived with respect to such Company Employees and their eligible dependents and shall provide them with credit for any co-payments, deductibles, and offsets (or similar payments) made during the plan year including the Effective Time for the purposes of satisfying any applicable deductible, out-of-pocket, or similar requirements under any Buyer Benefit Plans in which they are eligible to participate after the Effective Time.

(b) The parties hereto acknowledge and agree that all provisions contained in this Section 6.9 with respect to employees are included for the sole benefit of the respective parties hereto and shall not create any right (i) in any other Person, including, without limitation, any employees, former employees, any participant in any Company Plan or any beneficiary thereof or (ii) to continued employment with the Company or Buyer. After the Effective Time, nothing contained in this Section 6.9 shall interfere with Buyer's right to amend, modify or terminate any Company Plan or Buyer Benefit Plan (subject in each case to the provisions of Section 6.9(a) above) or to terminate the employment of any employee of the Company for any reason.

Section 6.9 Financing.

(a) Buyer shall use commercially reasonable efforts to arrange the Financing on the terms and conditions described in the Commitment Letter, including using reasonable best efforts (i) to negotiate definitive agreements with respect thereto on the terms and conditions contained therein and (ii) to satisfy all conditions applicable to Buyer in such definitive agreements that are within its control. In the event any portion of the Financing becomes unavailable in the manner or from the sources contemplated in the Commitment Letter, Buyer shall use reasonable best efforts to arrange any such portion from alternative sources on comparable or more favorable terms in the aggregate to Buyer (as determined in the reasonable judgment of Buyer). Buyer shall give the Company prompt written notice of (i) any material breach by any party of the Commitment Letter (or any definitive agreements entered into pursuant to the Commitment Letter or any replacements thereof), (ii) any termination of the Commitment Letter or (iii) any exercise of any "market out" or "material adverse change" conditions contained in the Commitment Letter (or any replacements thereof).

(b) The Company agrees to provide, and shall cause its Subsidiaries and its and their respective Representatives to provide, all cooperation reasonably necessary in connection with the arrangement of the Financing, including (i) participation in meetings and due diligence sessions and (ii) the execution and delivery of any commitment or financing letters, pledge and security documents or other definitive financing documents, or other requested certificates or documents as may be reasonably requested by Buyer and Sub, and taking such other actions as are reasonably required to be taken by the Company in the Financing, provided, however, that the terms and conditions of the Financing may not require the payment of any commitment or other fees by the Company or any of its Subsidiaries, or the incurrence of any liabilities by the Company or any of its Subsidiaries, prior to the Effective Time and the obligation to make any such payment shall be subject to the occurrence of the Closing. The Company agrees and acknowledges that in connection with the obtaining of the Financing and the satisfaction of the closing conditions thereunder, at the Closing all outstanding secured indebtedness of the Company will be required to be paid in full, and all liens in connection therewith released, and

all documents relating to such indebtedness terminated, including without limitation any secured indebtedness set forth on Section 3.16 of the Company Disclosure Letter (which the Company represents and warrants is the only outstanding secured indebtedness of the Company and its Subsidiaries as of the date hereof).

ARTICLE VII
CONDITIONS PRECEDENT TO THE MERGER

Section 7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) The Company shall have obtained the Required Company Vote.

(b) The waiting period under the HSR Act, if applicable to the consummation of the Merger, shall have expired or been terminated and the requirements of any relevant foreign antitrust authority shall have been satisfied.

(c) No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins or otherwise prohibits consummation of the Merger.

Section 7.2 Conditions to Obligation of the Company to Effect the Merger. The obligations of the Company to effect the Merger shall be further subject to the satisfaction on or prior to the Closing Date of the following additional conditions precedent, any one or more of which may be waived by the Company:

(a) Buyer and Sub shall each have performed in all material respects and complied in all material respects with all obligations required to be performed or complied with by it prior to or at the Closing.

(b) The representations and warranties of Buyer and Sub contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date (without regard to materiality or Buyer Material Adverse Effect qualifiers contained therein), except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date, except where the failure of the representations and warranties to be true and correct individually or in the aggregate, has not had and could not reasonably be expected to have a Buyer Material Adverse Effect.

(c) The Company shall have received certificates dated the Closing Date and signed by each of Buyer and Sub certifying that the conditions specified in Sections 7.2(a) and 7.2(b) have been satisfied.

Section 7.3 Conditions to Obligations of Buyer and Sub to Effect the Merger. The obligations of Buyer and Sub to effect the Merger shall be further subject to the satisfaction on or prior to the Closing Date of the following additional conditions precedent, any one or more of which may be waived by Buyer and Sub:

(a) The Company shall have performed in all material respects and complied in all material respects with all obligations required to be performed or complied with by them prior to or at the Closing.

(b) The representations and warranties of the Company other than in Section 3.2 contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date (without regard to materiality or the Material Adverse Effect qualifiers contained therein), except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date, except where the failure of the representations and warranties to be true and correct individually or in the aggregate, has not had and could not reasonably be expected to have a Material Adverse Effect. The representations and warranties of the Company set forth in Section 3.2 shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on the Closing Date except for deviations of not more than 1% of the number of fully-diluted shares of Company Common Stock outstanding set forth therein.

(c) Buyer and Sub shall have received a certificate dated the Closing Date and signed by the Chief Executive Officer and Chief Financial Officer of the Company, certifying that the conditions specified in Section 7.3(a) and 7.3(b) have been satisfied.

(d) No Material Adverse Effect shall have occurred and be continuing.

(e) The Financing contemplated by the Commitment Letter shall have been obtained on substantially the terms set forth in the Commitment Letter or on such other terms as are reasonably satisfactory to Buyer.

ARTICLE VIII
TERMINATION, AMENDMENT AND WAIVER

Section 8.1 Termination. This Agreement may be terminated and the Merger and the other transactions contemplated by this Agreement may be abandoned at any time prior to the Closing Date, whether before or after approval of matters presented in connection with the Merger by the stockholders of the Company:

(a) by the mutual written consent of the Company, Buyer and Sub;

(b) by either the Company on the one hand or by Buyer and Sub on the other hand, upon written notice to the other party, if any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable;

(c) by either the Company on the one hand or by Buyer and Sub on the other hand, upon written notice to the other party, if the Required Company Vote shall not have been obtained upon a vote taken thereof at the duly convened Company Stockholders Meeting or any adjournment thereof;

(d) by either the Company on the one hand or by Buyer and Sub on the other hand, upon written notice to the other party, if the Merger shall not have been consummated by November 30, 2005, for any reason; provided, however, that the right to terminate this Agreement under this Section 8.1(d) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been a principal cause of or resulted in the failure of the Merger to occur on or before such date;

(e) by either the Company on the one hand or by Buyer and Sub on the other hand, upon written notice to the other party, if there shall have been a breach by the other of any of the covenants or agreements or any of the representations or warranties set forth in this Agreement on the part of such other party, which breach, either individually or in the aggregate, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 7.2(a) or (b) or Section 7.3(a) or (b), as the case may be, and which breach has not been cured within thirty (30) days following written notice thereof to the breaching party or, by its nature, cannot be cured within such time period;

(f) by the Company, upon written notice to Buyer and Sub, if the Company has approved a Superior Proposal in accordance with Section 5.2;

(g) by Buyer and Sub, upon written notice to the Company:

(i) if the Company's Board of Directors shall have (A) withheld, withdrawn, amended, qualified or modified or changed in a manner adverse to Buyer and Sub, its approval or recommendation of the adoption of this Agreement, the Voting Agreement or the Merger or other transactions contemplated hereby, (B) failed to call or hold the Company Stockholders Meeting in accordance with Section 6.1, (C) failed to include in the Proxy Statement distributed to the Company's stockholders its recommendation in favor of the approval and adoption of this Agreement, the Voting and the Merger and the other transactions contemplated hereby, (D) entered into any letter of intent, agreement in principle, heads of agreement, acquisition agreement or similar agreement with respect to any Takeover Proposal or (E) approved or recommended any Takeover Proposal; or

(ii) if (A) a tender or exchange offer relating to securities of the Company shall have been commenced and the Company's Board of Directors shall not have recommended that the Company's stockholders reject such tender or exchange offer within ten (10) business days after the commencement thereof or (B) the Company's Board of Directors shall have waived Section 203 of the DGCL with respect to any Person other than Buyer and Sub or their affiliates or any group of which any them is a member;

Section 8.2 Effect of Termination. In the event of termination of this Agreement by either Buyer or the Company, as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability hereunder on the part of the Company, Buyer, Sub or their respective officers or directors, including under those provisions of this Agreement that expressly survive termination hereof, except that nothing herein shall relieve any party from any liabilities or damages arising out of its willful breach of this Agreement.

Section 8.3 Amendment. Subject to compliance with applicable Law, this Agreement may be amended by the Company and Buyer (on behalf of itself and Sub), by action taken or authorized by their respective Boards of Directors, at any time before or after approval of the matters presented in connection with the Merger by the stockholders of the Company, except that after any approval of the transactions contemplated by this Agreement by the stockholders of the Company, there may not be, without further approval of such stockholders, any amendment of this Agreement that reduces the amount or changes the form of the consideration to be delivered under this Agreement to the holders of the Company Common Stock, other than as contemplated by this Agreement. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

Section 8.4 Waiver. At any time prior to the Effective Time, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein for the benefit of such party which may legally be waived. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Unless otherwise provided, the rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that the parties hereto may otherwise have at law or in equity. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

Section 8.5 Termination Fee.

(a) The Company will pay to Buyer, by wire transfer of immediately available funds, an amount equal to $ 5,500,000 (the "Termination Fee") if this Agreement is terminated as follows:

(i) if the Company shall terminate this Agreement pursuant to Section 8.1(f), then the Company will pay the Termination Fee on the business day following such termination, and such termination shall not be effective until such payment is made;

(ii) if Buyer terminates this Agreement pursuant to Section 8.1(g), then the Company will pay the Termination Fee on the business day following such termination; or

(iii) if (A) the Company or Buyer terminates this Agreement pursuant to Section 8.1(c) or 8.1(d) or (B) Buyer terminates this Agreement pursuant to Section 8.1(e) and after the date hereof and prior to such termination, any Third Party shall have made to the Company or its stockholders (in the case of a termination by the Company or Buyer pursuant to Section 8.1(d) or by Buyer pursuant to Section 8.1(e)) or publicly announced (in the case of a termination by the Company or Buyer pursuant to Section 8.1(c)) a Takeover Proposal and

within 12 months following termination of this Agreement, any transaction included in the definition of Takeover Proposal is consummated or the Company enters into an agreement providing for such a transaction, then the Company will pay the Termination Fee upon the earlier of the consummation of such transaction or the execution of such agreement.

(b) The Company acknowledges that the agreements contained in this Section 8.5 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Buyer would not enter into this Agreement.

(c) The Company shall pay (as incurred) all expenses, including reasonable fees and expenses of counsel, that Buyer may incur in enforcing the obligations provided for in this Section 8.5.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made (i) as of the date and time delivered or sent by facsimile if delivered personally or by facsimile, and (ii) on the third business day after deposit in the U.S. mail, if mailed by registered or certified mail (postage prepaid, return receipt requested), in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice, except that notices of changes of address shall be effective upon receipt):

If to the Company:

Orphan Medical, Inc.
Ridgedale Office Center
13911 Ridgedale Drive, Suite 250
Minnetonka, MN 55305
Attention: Chief Executive Officer
Facsimile: (952) 541-9209

With a copy to:

Dorsey & Whitney LLP
50 South Sixth Street
Suite 1500
Minneapolis, Minnesota 55402-1498
Attention: Philip E. Bauer, Esq.
Facsimile: (612) 340-7800

If to Buyer and Sub:

Jazz Pharmaceuticals, Inc.
3180 Porter Drive
Palo Alto, CA 94304
Attention: General Counsel
Facsimile: (650) 496-3781

With a copy to:

Simpson Thacher & Bartlett LLP
3330 Hillview Avenue
Palo Alto, CA 94304
Attention: Kirsten Jensen, Esq.
Facsimile: (650) 251-5002

Section 9.2 Certain Terms.

(a) When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) "Affiliate" of a Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person.

(c) "Antizol" means the fomepizole injection sold by the Company under the brand name Antizol®.

(d) "Code" shall mean the Internal Revenue Code of 1986, as amended, and, to the extent necessary for purposes of interpreting any provision thereof, the rules and regulations promulgated thereunder.

(e) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of stock, as trustee or executor, by contract or credit arrangement or otherwise.

(f) "Cystadane" means the betaine anhydrous for oral solution sold by the Company under the brand name Cystadane®.

(g) "Environmental Laws" means any and all federal, state, foreign, interstate, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decisions, injunctions, decrees, requirements of any Governmental Authority, any and all common law

requirements, rules and bases of liability regulating, relating to, or imposing liability or standards of conduct concerning pollution, Hazardous Materials or protection of human health, safety or the environment, as currently in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C., § 136 et seq., Occupational Safety and Health Act 29 U.S.C. § 651 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and the Endangered Species Act (16 U.S.C. § 1531 et seq.) as such laws have been amended or supplemented, and the regulations promulgated pursuant thereto, and all analogous state or local statutes.

(h) "Environmental Liabilities" means any and all Liabilities of or relating to Company or any of its Subsidiaries (including any entity which is, in whole or in part, a predecessor of such party or any of such Subsidiaries), which (A) arise under or relate to matters covered by Environmental Laws and (B) relate to actions occurring or conditions existing on or prior to the Closing.

(i) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(j) "ERISA Affiliate" means any entity which is a member of: (A) a "controlled group of corporations," as defined in Section 414(b) of the Code; (B) a group of entities under "common control," as defined in Section 414(c) of the Code; or (C) an "affiliated service group," as defined in Section 414(m) of the Code, or treasury regulations promulgated under Section 414(o) of the Code, any of which includes the Company.

(k) "FDA" means the U.S. Food and Drug Administration.

(l) "FDCA" means the Federal Food, Drug and Cosmetic Act of 1938, as amended, 21 U.S.C. §301 et. seq.

(m) "GAAP" means United States generally accepted accounting principles.

(n) "Hazardous Materials" means any materials or wastes, defined, listed, classified or regulated as radioactive, hazardous, toxic or otherwise dangerous to health or the environment in or under any Environmental Laws including without limitation petroleum, petroleum products, friable asbestos, urea formaldehyde, radioactive materials and polychlorinated biphenyls, but excluding office and janitorial supplies safely stored and maintained.

(o) "Indebtedness" of any Person means obligations of such Person for borrowed money or evidenced by bonds, debentures, notes or other similar instruments, and all such obligations of other Persons that are guaranteed by such Person.

(p) "Knowledge," when used with respect to the Company, means the actual awareness of a particular fact or other matter by John Howell Bullion, Timothy G. McGrath,

Mark Perrin, Dayton Reardon or William Houghton (or any successor to such persons in their current positions with the Company), and awareness of that particular fact or other matter that either of such Persons, acting reasonably, could be expected to discover or otherwise obtain upon due inquiry.

(q) "Lien" means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, title retention device, collateral assignment, adverse claim, restriction or other encumbrance of any kind in respect of such asset (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

(r) "Permitted Lien" means: (A) statutory liens for taxes or other payments that are not yet due and payable; (B) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements; (C) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law; (D) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens; and (E) statutory purchase money liens.

(s) "Person" means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other entity.

(t) "Subsidiary" when used with respect to any party means any corporation or other organization, whether incorporated or unincorporated, (i) of which such party or any other Subsidiary of such party is a general partner (excluding partnerships, the general partnership interests of which held by such party or any Subsidiary of such party do not have a majority of the voting interests in such partnership), or (ii) at least a majority of the stock or other equity interests of which that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

(u) "Tax" shall mean any federal, state, local, foreign or provincial income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, alternative or added minimum, ad valorem, value added, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest, penalty or additions to Tax imposed by any Governmental Authority.

(v) "Xyrem" means sodium oxybate oral solution, as sold by the Company under the brand name Xyrem®.

Section 9.3 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. A facsimile signature of this Agreement or any document or agreement contemplated hereby shall be valid and have the same force and effect as a manually signed original.

Section 9.4 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the documents and instruments referred to herein and the recitals which are hereby incorporated by reference and made a part hereof) and the Confidentiality Agreement constitute the entire agreement and supersede any and all other prior agreements and undertakings (including all letters of intent), both written and oral, among the parties, or any of them, with respect to the subject matter hereof. This Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 9.5 Governing Law; Consent to Jurisdiction; Waiver to Trial by Jury.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law thereof. The parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any of the courts of the State of Delaware sitting in the County of New Castle and the United States District Court for the State of Delaware (any such court, a "Delaware Court"), this being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto (i) consents to submit itself to the personal jurisdiction and venue of the Delaware Courts in the event any dispute arises out of this Agreement or the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, (iii) agrees that it will not bring any action relating to this Agreement or the transactions contemplated by this Agreement in any court other than a Delaware Court and (iv) irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which such party is to receive notice. **THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS EXECUTED AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES OF SUCH STATE WHICH WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER STATE**.

(b) **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT**. Each party certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would, in the event of litigation seek to invalidate the foregoing waiver, (ii) each party understands and has considered the implications of this waiver, (iii) each party makes this waiver voluntarily, and (iv) each party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.5(b).

Section 9.6 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that Sub may assign the rights and obligations of Sub to any other wholly owned Subsidiary of Buyer. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors or assigns.

Section 9.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner to the end that transactions contemplated hereby are fulfilled to the maximum extent possible.

Section 9.8 Performance by Sub. Buyer hereby agrees to cause Sub to comply with its obligations hereunder and whenever this Agreement requires Sub to take any action, such requirement shall be deemed to include an undertaking of Buyer to cause Sub to take such action.

Section 9.9 Non-Survival of Representations, Warranties and Agreements. None of the representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing Date, assuming the Closing occurs, except for those covenants and agreements that by their terms expressly apply or are expressly to be performed in whole or in part after the Closing Date.

Section 9.10 Disclosure Letters and Exhibits. The Company Disclosure Letter, Buyer Disclosure Letter and the Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 9.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.12 List of Defined Terms. Each of the following terms is defined in the Section identified below:

Affiliated Person	Section 3.13(a)
Agreement	Preamble
Buyer	Preamble
Buyer Benefit Plan	Section 6.8(a)
Buyer Disclosure Letter	Article IV
Buyer Material Adverse Effect	Section 4.3

Certificate of Merger	Section 1.3
Certificates	Section 2.3(b)
Closing	Section 1.2
Closing Date	Section 1.2
Company	Preamble
Company Benefit Arrangements	Section 3.18(d)
Company Capital Stock	Section 3.2(a)
Company Common Stock	Section 3.2(a)
Company Disclosure Letter	Article III
Company Employees	Section 6.8(a)
Company Financial Statements	Section 3.7(c)
Company Material Contract	Section 3.10(a)
Company Permits	Section 3.11(b)
Company Preferred Stock	Section 3.2(a)
Company SEC Documents	Section 3.7(a)
Company Stock Option Plans	Section 3.2(a)
Company Stock Options	Section 3.2(a)
Company Stockholders Meeting	Section 6.1(a)
Confidentiality Agreement	Section 5.1(b)
Constituent Corporations	Preamble
Contract	Section 3.10(a)
DGCL	Section 1.1
Dissenting Shares	Section 2.9(a)
Dissenting Stockholder	Section 2.9(a)
Drug Product	Section 3.15(a)
Effective Time	Section 1.3
Exchange Act	Section 6.1(b)
Exchange Fund	Section 2.3(a)
Governmental Authority	Section 3.6
Holders	Section 2.3(a)
HSR Act	Section 3.6
Indemnified Parties	Section 6.5(a)
Intellectual Property Rights	Section 3.14(a)
Law	Section 3.6
Merger	Recitals
Option Share Amount	Section 2.2(c)

Paying Agent	Section 2.3(a)
Per Common Share Price	Section 2.1(c)
Per Senior Preferred Share Price	Section 2.1(d)
Per Series B Share Price	Section 2.1(e)
Pre-Closing Period	Section 5.1(a)
Proxy Statement	Section 6.1(b)
Required Company Vote	Section 3.5(c)
Restated Bylaws	Section 3.4
Restated Certificate	Section 3.4
Sarbanes-Oxley Act	Section 3.7(b)
SEC	Section 3.7(a)
Sub	Preamble
Superior Proposal	Section 5.2(e)(ii)
Surviving Corporation	Section 1.1
Takeover Proposal	Section 5.2(e)(iii)
Takeover Statute	Section 3.21
Termination Fee	Section 8.5
Third Party	Section 5.2(e)(iv)
Warrant Share Amount	Section 2.2(d)
Warrants	Section 3.2(a)

[The remainder of this page is intentionally left blank; signature page follows]

IN WITNESS WHEREOF, Buyer, Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks, M.D.
Name: Samuel R. Saks, M.D.
Title: Chief Executive Officer

TWIST MERGER SUB, INC.

By: /s/ Carol Gamble
Name: Carol Gamble
Title: Vice President

ORPHAN MEDICAL, INC.

By: /s/ John Howell Bullion
Name: John Howell Bullion
Title: Chief Executive Officer

EXHIBIT 3.1

SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
JAZZ PHARMACEUTICALS, INC.

Jazz Pharmaceuticals, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "***Corporation***") does hereby certify that:

1. The original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 20, 2004.

2. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 17, 2004.

3. The Second Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

4. The Second Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Jazz Pharmaceuticals, Inc. has caused this Second Amended and Restated Certificate of Incorporation to be signed by the Secretary on this day, June 22, 2005.

Jazz Pharmaceuticals, Inc.

By: /s/ Carol A. Gamble
Carol A. Gamble, Secretary

EXHIBIT A

SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
JAZZ PHARMACEUTICALS, INC.

ARTICLE 1. NAME

The name of the Corporation is Jazz Pharmaceuticals, Inc.

ARTICLE 2. ADDRESS

The address of the registered office of the Corporation in the State of Delaware is 615 S. Dupont Highway, Dover, DE, County of Kent. The name of its registered agent at such address is National Corporate Research, Ltd.

ARTICLE 3. PURPOSE

The purpose of the Corporation is to engage in any lawful acts or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

ARTICLE 4. AUTHORIZED CAPITAL

The Corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock" respectively. The total number of shares of Common Stock which the Corporation is authorized to issue is 252,716,057, with a par value of $.0001 per share, and the total number of shares of Preferred Stock which the Corporation is authorized to issue is 308,236,575, with a par value of $.0001 per share. 15,000,000 of the shares of Preferred Stock are designated "Series A Preferred Stock" (the "***Series A Preferred***"), 189,205,047 of the shares of Preferred Stock are designated "Series B Preferred Stock" (the "***Series B Preferred***"), 95,335,876 of the shares of Preferred Stock are designated as "Series B Prime Preferred Stock" (the "***Series B/P Preferred***") and 8,695,652 of the shares of Preferred Stock are designated as "Series BB Preferred Stock" (the "***Series BB Preferred***").

Notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, the number of authorized shares of Common Stock may be increased or decreased upon the vote or written consent of a majority in voting power of the outstanding shares of the Common Stock and Preferred Stock of the Corporation, voting together as a single class on an as-if converted to Common Stock basis.

The Series A Preferred, the Series B Preferred, the Series B/P Preferred and the Series BB Preferred shall together be referred to hereinafter as the "***Preferred Stock***."

ARTICLE 5. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF CAPITAL STOCK

The relative rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes of the shares of capital stock or the holders thereof are as follows:

1. Dividend Preference.

(a) The holders of Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends at an annual rate equal to (i) $0.08 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) for each outstanding share of Series A Preferred held by them, (ii) $0.1091 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) for each outstanding share of Series B Preferred and each outstanding share of Series B/P Preferred held by them and (iii) $0.1472 for each outstanding share of Series BB Preferred held by them, payable when and if declared by the Corporation's Board of Directors, in preference and priority to the payment of dividends or distributions on any shares of Common Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries pursuant to contractual arrangements or a stock or option plan of the Corporation approved by the Corporation's Board of Directors). No dividends shall be declared and paid on the Series A Preferred, the Series B Preferred, the Series B/P Preferred or the Series BB Preferred unless dividends are declared and paid at the same time on all such series of Preferred Stock. In the event dividends are paid to the holders of Series A Preferred, Series B Preferred, Series B/P Preferred and/or Series BB Preferred that are less than the full amounts to which such holders are entitled pursuant to this Section 1(a), such holders shall share ratably in the total amount of dividends paid according to the respective amounts due each such holder if such dividends were paid in full. The dividends payable to the holders of the Preferred Stock shall not be cumulative, and no right shall accrue to the holders of the Preferred Stock by reason of the fact that dividends on the Preferred Stock are not declared or paid in any previous fiscal year of the Corporation, whether or not the net profits or surplus of the Corporation were sufficient to pay such dividends in whole or in part.

(b) After payment of dividends to the holders of Series A Preferred, the Series B Preferred, the Series B/P Preferred and the Series BB Preferred as set forth above, dividends may be declared and paid to all holders of Common Stock; provided,

however, that no dividend may be declared and distributed among holders of Common Stock at a per share rate greater than the per share rate at which dividends are paid to the holders of Preferred Stock based on the number of shares of Common Stock into which such shares of Preferred Stock are convertible on the date such dividend is declared.

(c) In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Preferred Stock (as provided in Section 4 of this Article 5), the Corporation shall, at the option of the Corporation, pay in cash to the holders of Preferred Stock subject to conversion an amount equal to the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section 4 of this Article 5.

2. Liquidation Preference.

(a) In the event of (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or not, or (ii) a Change of Control (each a "***Liquidation Event***"), distributions to the Corporation's stockholders shall be made in the following manner:

(i) Each holder of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, by reason of their ownership of such stock, the amount of (a) $1.84 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) (the "***Original Series BB Issue Price***") for each share of Series BB Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series BB Preferred (collectively, the "***Series BB Preference***"), (b) $1.3636 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) (the "***Original Series B Issue Price***") for each share of Series B Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series B Preferred (collectively, the "***Series B Preference***"), (c) $1.3636 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) (the "***Original Series B/P Issue Price***") for each share of Series B/P Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series B/P Preferred (collectively, the "***Series B/P Preference***"), and (d) $1.00 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) (the "***Original Series A Issue Price***") for each share of Series A Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series A Preferred (collectively, the "***Series A Preference***"). If, upon the occurrence of a

Liquidation Event, the assets and funds available to be distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts set forth in this Section 2(a)(i), then the entire assets and funds of the Corporation legally available for distribution to such holders shall be distributed ratably based on the total preferential amount due each such holder under this Section 2(a)(i).

(ii) After payment has been made to the holders of Preferred Stock of the full amounts to which they are entitled pursuant to Section 2(a)(i) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed ratably among the holders of Common Stock.

(iii) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of a series of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of such series of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(iv) "***Change of Control***" means (i) a sale of all or substantially all of the assets of the Corporation to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Corporation to a Person in which the stockholders of the Corporation immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Corporation (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Corporation resulting in more than 50% of the voting power of the Corporation being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Corporation with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Corporation immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

(v) "***Initial B/P Holder***" means a Person who holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Corporation. "***Affiliate***" means, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided, however, that no Series BB Holder shall be considered an Affiliate of any other Person except to the extent, and only to the extent, that such Series BB Holder holds Series A Preferred, Series B Preferred or Series B/P Preferred (or shares of Common Stock issued upon conversion thereof). "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" has the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "***Securities Act***"). "***Series BB Holder***" means a holder of Series BB Preferred or warrants to purchase Series BB Preferred. "***Affiliated Fund***" means an investment fund that is an Affiliate of a Person.

(b) Notwithstanding anything herein to the contrary, the Corporation may repurchase shares of Common Stock issued to or held by former directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons, which agreements were authorized by the Board of Directors of the Corporation or the administrator of any of the Corporation's equity incentive plans.

(c) The value of securities and property paid or distributed pursuant to this Section 2 shall be computed at fair market value at the time of payment to the Corporation or at the time made available to stockholders, all as determined in good faith by the Board of Directors, provided that (i) if such securities are listed on any established stock exchange or a national market system, their fair market value shall be the closing sales price for such securities as quoted on such system or exchange (or the largest such exchange) for the date the value is to be determined (or if there are no sales for such date, then for the last preceding business day on which there were sales), as reported in the Wall Street Journal or similar publication, and (ii) if such securities are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for such securities on the date the value is to be determined (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices).

(d) Nothing hereinabove set forth shall affect in any way the right of each holder of Preferred Stock to convert such shares at any time and from time to time into Common Stock in accordance with Section 4 of this Article 5.

(e) The Corporation shall not enter into any agreement in contravention of the distribution provisions set forth in this Section 2.

3. Voting Rights.

Except as otherwise required by law or elsewhere in this Certificate of Incorporation, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or the effective date of any written consent of stockholders, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number (with one-half being rounded upward). Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Corporation's Bylaws.

4. Conversion Rights.

The holders of Preferred Stock shall have conversion rights as follows:

(a) ***Right to Convert to Common Stock***. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Preferred Stock as follows:

(i) Each share of Series A Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the then effective Conversion Price for such Series A Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred (the "***Series A Conversion Price***") shall initially be the Original Series A Issue Price. The initial Series A Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(ii) Each share of Series B Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the then effective Conversion Price for such Series B Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred (the "***Series B Conversion Price***") shall initially be the Original Series B Issue Price. The initial Series B Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(iii) Each share of Series B/P Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series B/P Issue Price by the then effective Conversion Price for such Series B Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B/P Preferred (the "***Series B/P Conversion Price***") shall initially be the Original Series B/P Issue Price. The initial Series B/P Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(iv) Each share of Series BB Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series BB Issue Price by the then effective Conversion Price for such Series BB Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series BB Preferred (the "***Series BB Conversion Price***") shall initially be the Original Series BB Issue Price. The initial Series BB Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(b) ***Automatic Conversion***. Each share of Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock as determined by dividing the applicable Original Issue Price by the then effective applicable Conversion Price upon the earlier of: (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "***Securities Act***") covering the offer and sale of Common Stock for the account of the Corporation to the public with aggregate proceeds to the Corporation of at least $60,000,000 (before deduction of underwriters commissions and expenses) and a per share price not less than $4.09 per share (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits or other similar transaction) and (ii) the affirmative vote or written consent of at least 55% in voting power of the then outstanding shares of Preferred Stock, voting as a single class on an as-if converted to Common Stock basis (each such event is an "***Automatic Conversion***"). In the event of an Automatic Conversion of the Preferred Stock upon a public offering as aforesaid, the person(s)

entitled to receive the Common Stock issuable upon such conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior and subject to the closing of such public sale of securities.

(c) ***Mechanics of Conversion***. No fractional shares of Common Stock shall be issued upon conversion of 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 value of such share, as determined in good faith by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an Automatic Conversion pursuant to Section 4(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent, as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable in lieu of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of Automatic Conversion, on the date of closing of the offering or the date of the affirmative vote or written consent of the Preferred Stock, as applicable, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) ***Adjustments to Conversion Price***.

(i) ***Adjustments for Dividends, Stock Splits, Subdivisions, Combinations or Consolidations with respect to Common Stock***. In the event the outstanding shares of Common Stock shall be increased by stock dividend payable in Common Stock, stock split, subdivision or other similar transaction occurring after the filing of this Second Amended and Restated Certificate of Incorporation into a greater number of shares of Common Stock, the Conversion Prices then in effect shall, concurrently with the effectiveness of such event, be decreased in proportion to the percentage increase in the outstanding number of shares of Common Stock. In the event the outstanding shares of Common Stock shall be decreased by a reverse stock split, combination, consolidation or other similar transaction occurring after the filing of this Second Amended and Restated Certificate of Incorporation into a lesser number of shares of Common Stock, the Conversion Prices then in effect shall, concurrently with the effectiveness of such event, be increased in proportion to the percentage decrease in the outstanding number of shares of Common Stock.

(ii) ***Adjustments for Other Distributions***. In the event the Corporation at any time or from time to time shall declare a distribution payable in securities of the Corporation not referred to in Section 4(d)(i) or securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i), then, in each such case for the purpose of this Section 4(d)(ii), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock entitled to receive such distribution.

(iii) ***Adjustments for Reclassification, Exchange and Substitution***. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification, exchange, substitution or otherwise (other than a subdivision or combination of shares provided for above or a Liquidation Event), the Conversion Prices then in effect shall, concurrently with the effectiveness of such reorganization, reclassification, exchange, substitution or other transaction, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such Preferred Stock immediately before that change.

(e) ***Certificate as to Adjustments***. Upon the occurrence of each adjustment or readjustment of the Conversion Prices pursuant to Section 4(d) above, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price for such series of Preferred Stock at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such series of Preferred Stock.

(f) ***Special Adjustment to Conversion Price and Mandatory Conversion to Common Stock; Optional and Mandatory Conversion of Series B/P Preferred into Series B Preferred***.

(i) Notwithstanding anything to the contrary set forth in Section 4(c), if at any time after the date on which the first share of Series B Preferred is issued (the "***Series B Original Issue Date***"),

(1) the Corporation provides notice to a holder of Series B Preferred and/or Series B/P Preferred that the Corporation is selling additional shares of Series B Preferred and/or Series B/P Preferred in accordance with the terms and conditions of that certain Preferred Stock Purchase Agreement, dated January 27, 2004, between the Corporation and the investors named therein (as the same may be amended from time to time in accordance with the terms thereof, the "***Purchase Agreement***"), a copy of which agreement is and shall be on file with the Corporation;

(2) such holder is obligated to purchase additional shares of Series B Preferred and/or Series B/P Preferred pursuant to the terms and conditions of the Purchase Agreement; and

(3) such holder fails to purchase all such shares;

then, without the need for any further action, the Conversion Price then in effect for all of such holder's shares of Series B Preferred and Series B/P Preferred shall be increased by 100%, and, immediately after such increase, all of such holder's shares of Series B Preferred and Series B/P Preferred shall automatically be converted into shares of Common Stock effective as of the date of closing of such sale of additional shares of Series B Preferred and/or Series B/P Preferred under the Purchase Agreement, whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

(ii) Each share of Series B/P Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Series B/P Preferred into one share of Series B Preferred. At such time that a holder of Series B/P Preferred, together with any Affiliate Fund(s) of such holder, holds a number of shares of Series B/P Preferred that is less than 8-2/3% of the number of Total B and B/P Shares, all shares of Series B/P Preferred held by such holder or any Affiliated Fund of such holder shall automatically be converted into shares of Series B Preferred at a one for one ratio. For purposes of this Certificate of Incorporation, "***Total B and B/P Shares***" means (a) all shares of Series B/P Preferred that have been issued by the Corporation at any time, including for these purposes any shares of Series B/P Preferred that have been issued and later converted into shares of Series B Preferred and any shares of Series B/P Preferred that have been issued and later converted into shares of Common Stock and (b) all shares of Series B Preferred that have been issued by the Corporation at any time, including for these purposes shares of Series B Preferred that have been issued and later converted into shares of Common Stock, but not including any shares of Series B Preferred that have been issued upon conversion of Series B/P Preferred.

(iii) The holder of any shares of Series B/P Preferred converted pursuant to Section 4(f)(i) or 4(f)(ii) above shall surrender the certificate or certificates for the shares to be converted, duly endorsed, at the office of the Corporation or any transfer agent for the Series B/P Preferred. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at an address designated by such holder, a certificate or certificates for the number of shares of Common Stock (determined pursuant to Section 4(f)(i) above) or Series B Preferred (determined pursuant to Section 4(f)(ii) above), as applicable; provided, however, that in the event of an automatic conversion pursuant to Section 4(f)(i) or 4(f)(ii) above, the outstanding shares of Series B/P Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, further, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock or Series B Preferred, as applicable, issuable upon conversion unless the certificates evidencing such shares of Series B/P Preferred are either delivered to the Corporation or its transfer agent, as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder, a certificate or certificates for the number of shares of Common Stock or Series B Preferred, as applicable, to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the

shares of Series B/P Preferred to be converted, or, in the case of an automatic conversion pursuant to Section 4(f)(i) above, as of the close of business on the date of the closing of additional shares of Series B Preferred and/or Series B/P Preferred under the Purchase Agreement, or, in the case of an automatic conversion pursuant to Section 4(f)(ii) above, as of the close of business on the date that the holder of Series B/P Preferred, together with any Affiliate Fund(s), holds a number of shares of Series B/P Preferred that is less than 8-2/3% of the number of Total B and B/P Shares, and the person or persons entitled to receive the shares of Series B Preferred issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Series B Preferred as of the close of business on such date.

(g) ***Notices of Record Date***. In the event that the Corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate with or into any other Person, or sell, lease, or convey all or substantially all its assets, property or business, or to liquidate, dissolve, or wind up or otherwise consummate a Liquidation Event; then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock:

(1) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (iii) and (iv) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

Each such written notice shall be delivered personally or via overnight courier, or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of the Corporation.

(h) ***Issue Taxes***. The Corporation shall pay any and all issue and other taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock or Series B Preferred on conversion of shares of Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(i) ***Reservation of Stock Issuable Upon Conversion***. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of 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 Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation. In addition, the Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series B Preferred, solely for the purpose of effecting the conversion of the shares of the Series B/P Preferred, such number of its shares of Series B Preferred as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B/P Preferred.

(j) ***Status of Converted Preferred Stock***. In the event that any shares of any series of Preferred Stock shall be converted pursuant to this Section 4, the shares so converted, upon such conversion, shall not be available for reissuance.

***5. Redemption Rights*.**

The Series A Preferred, the Series B Preferred, the Series B/P Preferred and the Series BB Preferred are not redeemable.

6. Covenants.

In addition to any other rights provided by law, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 55% in voting power of the then outstanding shares of Preferred Stock, voting as a single class on an as-if converted to Common Stock basis, take any action (whether by merger, consolidation or otherwise) that:

(a) alters or changes the preferences, rights, privileges or powers of any series of Preferred Stock; provided, however, that any alteration or change that affects the preferences, rights, privileges or powers of any series of Preferred Stock, but that does not so affect the preferences, rights, privileges or powers of all other series of Preferred Stock, shall also require the affirmative vote or written consent of the holders of a majority in voting power of the then outstanding shares of such affected series of Preferred Stock, voting as a separate class (for example, Article 6 hereof may not be altered or changed without the affirmative vote or written consent of the holders of a majority in voting power of shares of Series B/P Preferred, voting as a separate class); provided further, however, that if the affirmative vote or written consent of the holders of a majority in voting power of the Series B Preferred shall be required pursuant to the prior “provided, however” clause, and if at that time all of the issued shares of Series B/P Preferred shall have been converted into shares of Series B Preferred, the requirement shall be increased to 55% of the voting power of the Series B Preferred;

(b) increases the authorized number of shares of Preferred Stock;

(c) authorizes, or otherwise obligates the Corporation to issue, any new class or series of stock or other securities exercisable or exchangeable for any class or series of stock (other than Common Stock or options to purchase Common Stock issued to directors, officers, employees, consultants or advisors of the Corporation pursuant to a stock option plan or other agreement or arrangement approved by the Corporation's Board of Directors);

(d) causes any merger, consolidation or any other transaction or series of related transactions constituting a Liquidation Event;

(e) amends, waives or repeals any provision of, or adds any provision to, its Certificate of Incorporation or Bylaws;

(f) makes any change in the authorized number of members of the Board of Directors; or

(g) declares or pays dividends on or makes any distributions with respect to Common Stock or Preferred Stock or results in any repurchase thereof (other than repurchases of restricted stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries pursuant to contractual arrangements or a stock or option plan of the Corporation approved by the Corporation's Board of Director).

7. Residual Rights.

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein are vested in the Common Stock.

ARTICLE 6. BOARD OF DIRECTORS

In furtherance and not in limitation of the powers conferred by Delaware law:

1. Bylaws. Except as otherwise provided herein or in the Bylaws of the Corporation, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

2. Election of Directors; Term. The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

3. Classes of Directors. So long as the holders of Series B/P Preferred have the right to elect Series B/P Directors (as defined below) in accordance with Sections 4 and 6 below, the Corporation shall have two classes of directors on the Corporation's Board of Directors designated as "***Series B/P Directors***" and "***Standard Directors***". Series B/P Directors shall be those directors elected in accordance with Section 4 below. Standard Directors shall be those directors who are not Series B/P Directors. The authorized total number of directors shall be fixed in accordance with the Corporation's Bylaws, provided that the authorized total number of Series B/P Directors shall be determined as set forth in Section 6 below.

4. Right to Elect. The holders of Series B/P Preferred, voting as a separate class, shall be entitled to elect the Series B/P Directors, and the holders of Preferred Stock and the holders of Common Stock, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect the Standard Directors. In the case of any vacancy in the office of a director elected by a specified group of stockholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of a majority in voting power of the shares of such specified group given at a special meeting of such stockholders duly called or by an action by written consent for that purpose. Any director who shall have been elected by a specified group of stockholders may be removed during the aforesaid term of office, without cause, by, and only by, the affirmative vote of the holders of a majority in voting power of the shares of such specified group, given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, and any such vacancy thereby created, may be filled by the vote of the holders of the shares of such specified group represented at such meeting or in such consent.

5. Board Action. The Series B/P Directors shall have an aggregate number of votes determined in the manner set forth in Section 6 below with respect to all matters to be acted upon by the Board of Directors of the Corporation. The number of such votes held by each Series B/P Director shall be determined as provided in Section 6 below. Each Standard Director shall have one vote each with respect to all matters to be acted upon by the Board of Directors of the Corporation. The act of a majority of the votes present at any meeting at which there is a quorum shall be the act of the Board of Directors; provided, however, that such majority may not consist entirely of votes from directors who are Affiliates of or have been designated, nominated or elected by a single stockholder and/or such stockholder's Affiliates. A quorum shall consist of a majority of the number of votes of the Board of Directors.

6. Number of Votes of Series B/P Directors; Number of Series B/P Directors.

(a) The Series B/P Directors, without regard to the number of Series B/P Directors, shall have the aggregate number of votes determined as follows:

(i) If the number of outstanding shares of Series B/P Preferred equals or exceeds Z times the number of Total B and B/P Shares, then the Series B/P Directors shall have in the aggregate the number of votes equal to (X-1), where X equals the total number of authorized Standard Directors of the Corporation.

(ii) If the number of outstanding shares of Series B/P Preferred is less than Z times the number of Total B and B/P Shares, then the Series B/P Directors shall have in the aggregate the number of votes equal to [(X-1) multiplied by (Y/Z)], rounded to the nearest whole number (rounded up where the fraction is .50); where:

(1) X equals the total number of authorized Standard Directors of the Corporation,

(2) Y is a fraction the numerator of which is the number of outstanding shares of Series B/P Preferred and the denominator of which is the number of Total B and B/P Shares,

(3) and Z equals the Total Capital Commitment of the Initial B/P Holder divided by the aggregate Total Capital Commitments of all Investors, where Total Capital Commitment and Investors have the meanings given in the Purchase Agreement.

For example, if X were 7, Y were 0.40 and Z were 0.52, the aggregate number of votes held by the Series B/P Directors would be 5; if X were 9, and Y were 0.40 and Z were 0.52, the aggregate number of votes held by the Series B/P Directors would be 6.

(iii) Each Series B/P Director shall have the number of votes (including fractional votes) determined by dividing the aggregate number of Series B/P Directors votes by the aggregate number of Series B/P Directors; provided, however, that the aggregate number of votes of the Series B/P Directors shall always be a whole number as provided in Section 6(a)(ii) above of this Article 6; provided, further, that the aggregate number of votes of the Series B/P Directors shall never be more than the aggregate number of votes calculated as if all of the shares of Series B/P Preferred were held by a single holder.

(b) If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is greater than or equal to three, the authorized number of Series B/P Directors shall be three. If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is equal to two, the authorized number of Series B/P Directors shall be two. If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is equal to one, the authorized number of Series B/P Directors shall be one. If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is less than one, the authorized number of Series B/P Directors shall be zero. If the authorized number of Series B/P Directors is reduced at any time, the Corporation shall hold an election of directors to elect the appropriate number of Series B/P Directors.

ARTICLE 7. LIMITATION OF DIRECTORS' LIABILITY; INDEMNIFICATION

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law of the State of Delaware is amended hereafter 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 of the State of Delaware, as so amended.

The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

Any amendment, repeal or modification of this Article 7 by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification.

ARTICLE 8. RESERVATION OF RIGHTS

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

AMENDED AND RESTATED BYLAWS

OF

JAZZ PHARMACEUTICALS, INC.

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AMENDED AND RESTATED BYLAWS

OF

JAZZ PHARMACEUTICALS, INC.

ARTICLE I

CORPORATE OFFICES

1.1 **Registered Office.**

The registered office of the corporation shall be in the City of Dover, County of Kent, State of Delaware. The name of the registered agent of the corporation at such location is National Corporate Research, Ltd.

1.2 **Other Offices.**

The Board of Directors or an executive officer delegated by the Board of Directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 **Place Of Meetings.**

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors or the chief executive officer. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation.

2.2 **Annual Meeting.**

The annual meeting of stockholders shall be held on such date, time and place, either within or outside the State of Delaware, as may be designated by resolution of the Board of Directors each year. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 **Special Meeting.**

A special meeting of the stockholders may be called at any time by the Board of Directors, the chairman of the board, the chief executive officer or by one or more stockholders holding shares in the aggregate entitled to cast not less than thirty percent of the votes at that meeting.

If a special meeting is called by any person or persons other than the Board of Directors, the chief executive officer or the chairman of the board, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the chief executive officer, any vice president, or the secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after the receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

2.4 **Notice Of Stockholders' Meetings.**

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these Bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place (if any), date and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 **Manner Of Giving Notice; Affidavit Of Notice.**

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic mail or other electronic transmission, in the manner provided in Section 232 of the Delaware General Corporation Law. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 **Quorum.**

The holders of a majority of the shares of stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, shall have power to adjourn the meeting to another place (if any), date or time.

2.7 **Adjourned Meeting; Notice.**

When a meeting is adjourned to another place (if any), date or time, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place (if any) thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the place (if any), date and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 **Organization; Conduct of Business.**

(a) Such person as the Board of Directors may have designated or, in the absence of such a person, the chief executive officer of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as Chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman of the meeting appoints.

(b) The Chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business. The date and time of opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

2.9 **Voting.**

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.12 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law and except as otherwise set forth in the certificate of incorporation, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

2.10 **Waiver Of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other

electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice, or any waiver of notice by electronic transmission, unless so required by the certificate of incorporation or these Bylaws.

2.11 **Stockholder Action By Written Consent Without A Meeting.**

Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action that 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 a consent in writing, setting forth the action so taken, is (i) 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) delivered to the Corporation in accordance with Section 228(a) of the Delaware General Corporation Law.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in this Section. A telegram, cablegram, electronic mail or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for purposes of this Section to the extent permitted by law. Any such consent shall be delivered in accordance with Section 228(d)(1) of the Delaware General Corporation Law.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing (including by electronic mail or other electronic transmission as permitted by law). If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.12 **Record Date For Stockholder Notice; Voting; Giving Consents.**

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 entitled 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 shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action.

If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent (including consent by electronic mail or other electronic transmission as permitted by law) is delivered to the corporation.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, if such adjournment is for thirty (30) days or less; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

2.13 **Proxies.**

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by an instrument in writing or by an electronic transmission permitted by law filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder’s name is placed on the proxy (whether by manual signature, typewriting, facsimile, electronic or telegraphic transmission or otherwise) by the stockholder or the stockholder’s attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

ARTICLE III

DIRECTORS

3.1 **Powers.**

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

3.2 **Number Of Directors.**

Upon the adoption of these Bylaws, the number of directors constituting the entire Board of Directors shall be not less than 7 and not more than 13, with the exact number within that range to be set by resolution of the Board of Directors. Thereafter, the number of directors may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. Except as otherwise provided in the certificate of incorporation, these Bylaws or any voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors, no reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires.

3.3 **Election, Qualification And Term Of Office Of Directors.**

Except as provided in Section 3.4 of these Bylaws, and unless otherwise provided in the certificate of incorporation or any voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors or these Bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Unless otherwise specified in the certificate of incorporation, elections of directors need not be by written ballot.

3.4 **Resignation And Vacancies.**

Any director may resign at any time upon written notice to the attention of the Secretary of the corporation. Except as otherwise provided in the certificate of incorporation or in a voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors, when one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation, any voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class shall first be filled in accordance with any voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors or, if no such voting agreement is then in effect or applicable:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the votes represented by the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such vacancy or increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 30% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 **Place Of Meetings; Meetings By Telephone; Exclusion of Director.**

The Board of Directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

The Board of Directors may exclude a director from any portion of a meeting that deals with a matter with which such director has a conflict of interest.

3.6 **Regular Meetings.**

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

3.7 **Special Meetings; Notice.**

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the chief executive officer, any vice president, the secretary or directors holding a majority of the votes held by all directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, facsimile, electronic transmission, or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered personally or by facsimile, electronic transmission, telephone or telegram, it shall be delivered at least 48 hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting. The notice need not specify the place of the meeting, if the meeting is to be held at the principal executive office of the corporation. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

3.8 **Quorum.**

At all meetings of the Board of Directors, directors holding a majority of the total number of votes held by all directors (including fractional votes, if any) shall constitute a quorum for the transaction of business, and the act of a majority of the votes (including fractional votes, if any) present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 **Waiver Of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these Bylaws.

3.10 **Board Action By Written Consent Without A Meeting.**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

3.11 **Fees And Compensation Of Directors.**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

3.12 **Approval Of Loans To Officers.**

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

3.13 **Removal Of Directors.**

Unless otherwise restricted by statute, by the certificate of incorporation, by these Bylaws or by any voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that if the stockholders of the corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

Except as otherwise provided in the certificate of incorporation, these Bylaws or any voting agreement then in effect signed by holders of a majority of shares entitled to vote in an election of directors, no reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires.

3.14 **Chairman Of The Board Of Directors.**

The corporation may also have, at the discretion of the Board of Directors, a chairman of the Board of Directors who may, at the discretion of the Board of Directors, be considered an officer of the corporation.

ARTICLE IV

COMMITTEES

4.1 **Committees Of Directors.**

The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the General Corporate Law of Delaware to be submitted to stockholders for approval or (ii) adopting, amending or repealing any Bylaw of the corporation.

4.2 **Committee Minutes.**

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

4.3 **Meetings And Action Of Committees.**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting) of these Bylaws, with such changes in the context of such provisions as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE V

OFFICERS

5.1 **Officers.**

The officers of the corporation shall be a chairman, chief executive officer or president or both, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the Board of Directors, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws. Any number of offices may be held by the same person.

5.2 **Appointment Of Officers.**

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 **Subordinate Officers.**

The Board of Directors may appoint, or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

5.4 **Removal And Resignation Of Officers.**

Any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the board or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom the power of removal is conferred by the Board of Directors. Any removal is without prejudice to the rights, if any, of a removed officer under any contract to which such officer is a party.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation or the officer under any contract to which the officer is a party.

5.5 **Vacancies In Offices.**

Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

5.6 **Chief Executive Officer.**

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the corporation (if such an officer is appointed) shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.7 **President.**

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board (if any) or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.8 **Vice Presidents.**

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the

president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws, the president or the chairman of the board.

5.9 **Secretary.**

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

5.10 **Chief Financial Officer.**

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

5.11 **Representation Of Shares Of Other Corporations.**

The chairman of the board, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this corporation, or any other person authorized by the Board of Directors or the chief executive officer or the president

or a vice president, is authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

5.12 **Authority And Duties Of Officers.**

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the Board of Directors or the stockholders.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

6.1 **Indemnification Of Directors And Officers.**

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a "director" or "officer" of the corporation includes any person (a) who is or was a director or officer of the corporation, (b) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.2 **Indemnification Of Others.**

The corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the corporation, (b) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 **Payment Of Expenses In Advance.**

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

6.4 **Indemnity Not Exclusive.**

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the certificate of incorporation

6.5 **Insurance.**

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of Delaware.

6.6 **Conflicts.**

No indemnification or advance shall be made under this Article VI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the certificate of incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

ARTICLE VII

RECORDS AND REPORTS

7.1 **Maintenance And Inspection Of Records.**

The corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in each such stockholder's name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law. The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

7.2 **Inspection By Directors.**

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

ARTICLE VIII

GENERAL MATTERS

8.1 **Checks.**

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 **Execution Of Corporate Contracts And Instruments.**

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 **Stock Certificates; Partly Paid Shares.**

The shares of a corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the Board of Directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 **Special Designation On Certificates.**

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 **Lost Certificates.**

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 **Construction; Definitions.**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 **Dividends.**

The directors of the corporation, subject to any restrictions contained in (a) the General Corporation Law of Delaware or (b) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

8.8 **Fiscal Year.**

The fiscal year of the corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

8.9 **Seal.**

The corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 **Transfer Of Stock.**

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 **Stock Transfer Agreements.**

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 **Registered Stockholders.**

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

8.13 **Facsimile Signature**

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

ARTICLE IX

AMENDMENTS

The Bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that the power to adopt, amend or repeal the Bylaws has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

CERTIFICATE OF SECRETARY

This is to certify that the foregoing is a true and correct copy of the Bylaws of the Corporation named in the title of these Bylaws and that such Bylaws were duly adopted by the Board of Directors of such Corporation as of February 18, 2004.

/s/ Carol A. Gamble

Carol A. Gamble, Secretary

Exhibit 4.3

JAZZ PHARMACEUTICALS, INC.

SECOND AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

June 24, 2005

JAZZ PHARMACEUTICALS, INC.
SECOND AMENDED AND RESTATED
INVESTOR RIGHTS AGREEMENT

THIS SECOND AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT (the "***Agreement***") is made as of June 24, 2005, by and among Jazz Pharmaceuticals, Inc., a Delaware corporation (the "***Company***"), and the holders of Common Stock, Preferred Stock and/or warrants to purchase the Series BB Preferred Stock of the Company listed on the attached Exhibit A (collectively, the "***Investors***").

RECITALS

A. The Company has issued to certain of the Investors warrants, dated as of the date hereof (the "***Series BB Warrants***"), to purchase in the aggregate 8,695,652 shares of the Company's Series BB Preferred Stock (the "***Series BB Preferred Stock***"), pursuant to a Senior Secured Note and Warrant Purchase Agreement, dated June 24, 2005, by and among the Company and certain of the Investors (the "***Note and Warrant Purchase Agreement***").

B. The Company and certain of the Investors have previously entered into an Amended and Restated Investor Rights Agreement dated February 18, 2004 (the "***Prior Agreement***") in connection with the sale by the Company of the Company's Series B Preferred Stock and Series B Prime ("***Series B/P***") Preferred Stock.

C. In connection with the purchase and sale of the Series BB Warrants pursuant to the Note and Warrant Purchase Agreement, the Company and Investors desire (i) to provide for certain rights of the Investors and (ii) to supersede and replace the Prior Agreement with this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Certain Definitions***. As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person provided, however, that, except for purposes of Section 14.2, no Series BB Holder shall be considered an Affiliate of any other Person except to the extent, and only to the extent, that such Series BB Holder holds Convertible Securities (or shares of Common Stock issued upon conversion thereof) other than Series BB Preferred Stock (or shares of Common Stock issued upon conversion thereof).

1.2 "***Change of Control***" means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of

an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

1.3 "***Commission***" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

1.4 "***Control***" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

1.5 "***Convertible Securities***" shall mean the shares of Series A Preferred Stock, Series B Preferred Stock, Series B/P Preferred Stock and Series BB Preferred Stock held from time to time by the Investors and their permitted assigns.

1.6 "***Defaulting Investor***" shall have the meaning given to such term in the Stock Purchase Agreement, dated January 27, 2004 between the Company and certain Investors (as the same may be amended from time to time in accordance with the terms thereof, the "***Purchase Agreement***").

1.7 "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

1.8 "***Form S-1***" shall mean Form S-1 issued by the Commission or any comparable or successor form or forms then in effect.

1.9 "***Form S-3***" shall mean Form S-3 issued by the Commission or any comparable or successor form or forms then in effect.

1.10 ***"Group"*** means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

1.11 "***Holder***" shall mean any holder of outstanding Registrable Securities which have not been sold to the public, but only if such holder is one of the Investors or an assignee or transferee of registration rights as permitted by Section 14.

1.12 "***Initial B/P Holder***" shall mean a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

1.13 "***KKR***" shall mean Kohlberg Kravis Roberts & Co., L.P. and its Affiliates.

1.14 "***Managers***" shall mean Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L.T. Wissel.

1.15 "***Material Adverse Event***" shall mean any change, event or effect that is materially adverse to the general affairs, business, operations, assets, prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole.

1.16 "***New Securities***" shall mean any capital stock of the Company, whether authorized or not, and any rights, options, or warrants to purchase said capital stock, any securities or instruments containing equity-like features (including without limitation stock appreciation rights and phantom stock), and securities of any type whatsoever that are, or may become, convertible into or exercisable for said capital stock; provided, however, that "New Securities" does not include (a) the Convertible Securities outstanding as of the date hereof or issued or issuable pursuant to the Purchase Agreement or the Company's Common Stock issuable upon conversion of the Convertible Securities or the Company's Series B Preferred Stock issuable upon conversion of the Series B/P Preferred Stock; (b) Common Stock or options to purchase Common Stock issued to the Company's officers, directors, employees, consultants, and advisors pursuant to a stock option plan of the Company or other agreement or arrangement approved by the Company's Board of Directors; (c) securities issued as a dividend or distribution with respect to the Convertible Securities; (d) securities issued in connection with equipment leasing, real estate, bank financing or similar transactions approved by the Company's Board of Directors; (e) securities issued pursuant to the acquisition of a product or technology, the acquisition of another corporation or entity by consolidation, corporate reorganization, or merger, or purchase of all or substantially all of the assets or capital stock of such corporation or entity, each as approved by the Company's Board of Directors; (f) securities issued in connection with the exercise of warrants, notes or other rights to acquire securities of the Company (excluding the options described in subsection (b) of this Section 1.16) approved by the Board of Directors; (g) securities issued without consideration pursuant to stock dividends, subdivisions, recapitalizations, stock splits or other similar transactions approved by the Company's Board of Directors; (h) non-convertible debt securities issued in connection with the Banc of America Debt (as defined in the Purchase Agreement); and (i) any other

securities issued with the approval of the Company's Board of Directors in connection with the settlement of any suit, action, claim, proceeding or investigation to which the Company is a party.

1.17 "***Person***" means an individual, partnership, corporation, limited liability company, limited partnership, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

1.18 The term "***Preferred Stock***" shall mean the Series A Preferred Stock, Series B Preferred Stock, Series B/P Preferred Stock and Series BB Preferred Stock of the Company.

1.19 The terms "***Register***", "***Registered***", and "***Registration***" refer to a registration effected by preparing and filing a registration statement on Form S-1, S-2 or S-3 in compliance with the Securities Act ("***Registration Statement***"), and the declaration or ordering of the effectiveness of such Registration Statement.

1.20 "***Registrable Securities***" shall mean (i) any Common Stock now owned or hereafter acquired by a Manager, (ii) the Common Stock issued or issuable upon conversion of the Convertible Securities, and (iii) any Common Stock issued (or issuable upon conversion or exercise of any warrant, right or other security which is issued) upon stock dividends, subdivisions, stock splits, recapitalization, merger or other distributions with respect to, or in exchange for, or in replacement of, such securities identified in clauses (i) and (ii) and this clause (iii), excluding, however, (iv) any Registrable Securities previously sold to the public and (v) any Registrable Securities sold by a person in a transaction in which its rights under this Agreement are not assigned.

1.21 "***Registration Expenses***" shall mean (a) all expenses incurred by the Company or its subsidiaries in complying with Sections 5, 6 or 7 of this Agreement, including, without limitation, all federal and state registration, qualification, and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, and the expense of any regular or special audits incident to or required by any such registration, and (b) the expenses of one special counsel for all Holders (if different from counsel to the Company) up to $45,000 and one special counsel for all Managers (if different from counsel to the Company) up to $45,000.

1.22 "***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.

1.23 "***Selling Expenses***" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities pursuant to this Agreement, and all fees and disbursements of counsel to the Holders and the Managers that are not included in Registration Expenses.

1.24 "***Series BB Holder***" means a holder of Series BB Warrants or Series BB Preferred Stock (or shares of Common Stock issued upon conversion thereof).

1.25 "***Trigger Persons***" shall mean Samuel Saks and Bruce Cozadd.

2. ***Financial Statements and Reports to Stockholders***.

2.1 ***Annual and Quarterly Statements***. For so long as an Investor and its Affiliates hold at least 500,000 shares of Convertible Securities or Common Stock issued upon conversion thereof (as adjusted for combinations, consolidations, subdivisions, stock splits and the like with respect to such shares), the Company shall deliver to such Investor:

(a) as soon as practicable after the end of each fiscal year of the Company and in any event within 90 days thereafter, a consolidated balance sheet of the Company as of the end of such year and consolidated statements of income, stockholders' equity and cash flow for such year, which year-end financial reports shall be in reasonable detail and, prepared in accordance with generally accepted accounting principles and, commencing with the year-end financial reports for 2004, shall be audited and certified by an independent public accounting firm of nationally recognized standing selected by the Company; and

(b) as soon as practicable after the end of each quarter of any fiscal year, and in any event within 45 days thereafter, a consolidated balance sheet of the Company as of the end of each such quarter, and a consolidated statement of income and a consolidated statement of cash flows of the Company for such quarter and for the current fiscal year to date, prepared in accordance with generally accepted accounting principles (except for required footnotes and year-end adjustments).

2.2 ***Monthly Statements; Annual Budget***. For so long as an Investor and its Affiliates hold at least 1% of the outstanding shares of Convertible Securities (including, for purposes of calculating the numerator and denominator, Common Stock issued upon conversion thereof), the Company will deliver to such Investor:

(a) within 30 days of the end of each month, a consolidated balance sheet of the Company as of the end of each such month, and a consolidated statement of income and a consolidated statement of cash flows of the Company for such month and for the current fiscal year to date; and

(b) by the beginning of the Company's fiscal year, an operating budget and plan (the "***Plan***") respecting the next fiscal year.

2.3 ***Inspection***. The Company shall permit each Investor that together with its Affiliates holds at least 500,000 shares of Convertible Securities (including Common Stock issued upon conversion thereof, and as adjusted for combinations, consolidations, subdivisions, stock splits and the like with respect to any such shares), at such Investor's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances, and accounts with its officers, all at such reasonable times as may be requested by each such Investor; provided, however, that the Company shall not be obligated pursuant to this Section 2.3 to provide any information which it reasonably considers to be a trade secret or confidential information.

2.4 ***Confidentiality***. Each Investor agrees that it will keep confidential and will not use (except in connection with the evaluation or monitoring of its investment or its representative's service on the Board of Directors of the Company), disclose or divulge for a period of three years after receipt any information regarding the Company and its business which such Investor may obtain from the Company pursuant to this Section 2, and which the Company has marked or otherwise specifically identified to the Investor as being confidential either orally or in writing, unless such information is known, or until such information becomes known, to the public through no fault of such Investor or its agents, or unless the Board of Directors, Chief Executive Officer, President or General Counsel of the Company gives his or her written consent to the Investor's release of such information, except that no such written consent shall be required (and the Investor shall be free to release such information) if such information is to be provided to the Investor's counsel or accountant, or to an officer, director, general partner, limited partner, stockholder, investment counselor or advisor of an Investor or such Investor's Affiliate, or employee of an Investor or such Investor's Affiliate with a need to know such information; provided that any such counsel, accountant, officer, director, general partner, limited partner, stockholder, investment counselor or advisor, or employee is subject to confidentiality obligations no less restrictive in any material respects than the provisions of this Section 2.4. Notwithstanding the foregoing, this Section 2.4 shall not apply (a) to information which an Investor learns from a third party with the right to make such disclosure, provided such Investor complies with the restrictions imposed by the third party, (b) to information which is in an Investor's possession prior to the time of disclosure by the Company and not acquired by such Investor under a confidentiality obligation, (c) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) an Investor is required to disclose such information by law or a governmental regulatory authority, (d) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) an Investor is required to disclose such information by court order, (e) to general and summary information disclosed to an Investor's or such Investor's Affiliates' general partners, limited partners, members, and/or stockholders in such Investor's or such Affiliates' periodic reporting to such parties or to an Investor's or such Investor's Affiliates' prospective investors in such Investor's or such Affiliates' marketing activities, in a manner consistent with the custom

and practice of the private venture capital and/or private equity industries, provided that such Investor or such Affiliate advise such parties that the information disclosed is confidential, and provided further that the information disclosed does not include any proprietary information of the Company, and (f) to an Investor's disclosure of the fact that such Investor has made an investment in the Company, the amount and general nature thereof, the identity of such Investor's co-investors in the Company if previously disclosed by the Company or such co-investor, and to such Investor's disclosure of the general business and goals of the Company.

3. ***Right of First Refusal***.

3.1 ***Right of First Refusal on New Securities***. The Company hereby grants to each Investor owning Convertible Securities (or Common Stock issued upon conversion thereof) the right of first refusal to purchase up to its Pro Rata Share (as defined below) of New Securities which the Company may, from time to time, propose to issue. Such Investors may purchase said New Securities on the same terms and at the same price at which the Company proposes to sell the New Securities. The "***Pro Rata Share***" of each Investor, for purposes of this right of first refusal, is the ratio of (i) the total number of shares of Common Stock issued or issuable upon conversion of outstanding Convertible Securities held by such Investor to (ii) the total number of shares of Common Stock (including any shares of Common Stock into which outstanding shares of the Convertible Securities are convertible) and Common Stock issuable pursuant to warrants, rights or options outstanding immediately prior to the issuance of the New Securities.

3.2 ***Notice***. In the event the Company proposes to undertake an issuance of New Securities, it shall give to each eligible Investor notice (the "***Notice***") of its intention, describing the type of New Securities, the price, the terms upon which the Company proposes to issue the same, the number of shares which such Investor is entitled to purchase pursuant to Section 3.1, and a statement that each Investor shall have 15 business days to respond to such Notice. Each such Investor shall have 15 business days from the date of receipt of the Notice to agree to purchase any or all of its Pro Rata Share of the New Securities for the price and upon the terms specified in the Notice by giving notice to the Company and stating therein the number of New Securities it wishes to purchase, including, if so desired, any over-allotment of New Securities it wishes to purchase in the event any other Investor elects to purchase less than its full Pro Rata Share, and forwarding payment for the number of New Securities (up to its Pro Rata Share) it has elected to purchase. In the event any such Investor elects to purchase less than its full Pro Rata Share of New Securities, the remaining balance of New Securities shall be allotted and sold to those Investors who have exercised their options to purchase their full Pro Rata Share within the 15 business day period specified in this Section 3.2 and have indicated in their notices to the Company that they desire to purchase overalloted New Securities. If there are two or more such Investors that elect to purchase

a total number of New Securities in excess of the number available, the remaining balance of New Securities shall be allocated to such Investors on a pro rata basis based on the total number of shares of Common Stock issued or issuable upon conversion of Convertible Securities held by such Investors electing to purchase an amount of New Securities in excess of their Pro Rata Share. Upon notice from the Company to Investors who elected to purchase additional New Securities that additional New Securities were allotted to such Investors, such Investors shall forward payment for the New Securities allotted to them within 15 business days of the Company's request for payment.

3.3 ***Sale of New Securities***. In the event an Investor fails to exercise in full its right of first refusal within the period of time specified in Section 3.2 or the eligible Investors do not exercise their right of first refusal with respect to all of the New Securities to be sold as specified in the Notice, the Company shall have 120 days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within 60 days after the date of such agreement) to sell the New Securities respecting which such Investor's rights were not exercised, at a price and upon terms no more favorable to the purchaser thereof than specified in the Notice. In the event the Company has not sold or entered into an agreement to sell the New Securities within such 120 day period (or sold and issued New Securities within 60 days from the date of the agreement), the Company shall not thereafter issue or sell any New Securities without first offering such securities to such Investor in the manner provided above.

3.4 ***Waiver of Right of First Refusal***. The right of first refusal granted under this Section 3 may be waived with respect to any particular sale of New Securities as to all eligible Investors by the Investors (excluding Defaulting Investors) holding at least 60% of the Convertible Securities purchased by the Investors (excluding Defaulting Investors) (or an equivalent number of shares consisting of Registrable Securities issued upon conversion of the Convertible Securities or a combination of such Registrable Securities and such Convertible Securities). Any such waiver shall not apply to any subsequent sale of New Securities.

4. ***Termination of Covenants***. The covenants of the Company set forth in Sections 2.1, 2.2, 2.3 and 3 shall terminate and be of no further force or effect with respect to all Investors upon the earliest to occur of (a) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of the Company's Common Stock to the public, (b) such time as the Company has a class of equity securities registered under the Exchange Act, and (c) a Change of Control, and such covenants shall terminate as to any Investor as of the date such Investor no longer holds any shares of Registrable Securities.

5. ***Demand for Initial Public Offering***. Subject to the terms of this Agreement, in the event that (i) the Company has not consummated an initial public offering pursuant

to an effective Registration statement under the Securities Act of 1933 covering the offer and sale of Common Stock for the account of the Company to the public by the fifth anniversary of the date on which the first share of Series B Preferred Stock was sold by the Company (the "***Fifth Anniversary***"), (ii) the Company receives after the Fifth Anniversary from Managers holding a majority of Registrable Securities and Convertible Securities then held by all Managers a notice requesting that the Company effect a Registration with respect to shares of Common Stock of the Company on Form S-1, and (iii) such notice is approved by (A) if both Trigger Persons are then employed by the Company, both Trigger Persons, or (B) if only one of the Trigger Persons is then employed by the Company, the Trigger Person who is then employed by the Company, or (C) if neither Trigger Person is then employed by the Company, the then current Chief Executive Officer of the Company, then the Company shall as soon as practicable, and in any event, within 90 days from receipt of such notice, use its reasonable best efforts to effect a primary Registration of shares of Common Stock of the Company, provided that the anticipated aggregate price to the public of the shares covered by such Registration would not be less than $60,000,000 (before deduction for underwriters commissions and expenses) and the anticipated per share price of such shares would be not less than $4.09 per share (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits or other similar transaction). The Company shall select the underwriter for the offering, subject to the approval of Managers holding a majority of the Registrable Securities then held by those Managers requesting the Registration under this Section 5.

6. ***Other Demand Registrations***.

6.1 ***Requests for Registration on Form Other Than Form S-3***.

(a) Subject to the terms of this Agreement, in the event that the Company shall receive from a Holder or Holders (not including any Managers) of at least 40% of the Registrable Securities (or a lesser percentage of such shares if the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000) at any time after six months after the effective date of the Registration Statement with respect to the Company's initial public offering of shares of Common Stock, a notice requesting that the Company effect any Registration with respect to at least 20% of the then outstanding shares of Registrable Securities (or a lesser percentage of such shares if the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000) on a form other than Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, and in any event, within 90 days from receipt of notice from the Holders requesting Registration, use reasonable best efforts to effect Registration of the Registrable Securities specified in such request, together with any Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company. So long as the Company is a

registrant qualified to use Form S-3, the Company shall not be obligated to take any action to effect any such registration pursuant to this Section 6.1(a) after the Company has effected one such Registration pursuant to this Section 6.1(a) and such Registration has been declared effective; provided, however, that the demand registration under this Section 6.1(a) shall be in addition to the demand registration provided for under Section 6.1(b).

(b) Subject to the terms of this Agreement, in the event that the Company shall receive from a Holder who originally committed to purchase (and did not default in any purchase) at least 50,000,000 shares of Series B Preferred Stock and/or Series B/P Preferred Stock (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) at any time after six months after the effective date of the Registration Statement with respect to the Company's initial public offering of shares of Common Stock, a notice requesting that the Company effect any Registration with respect to at least 20% of the then outstanding shares of Registrable Securities (or a lesser percentage of such shares if the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000) on a form other than Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, and in any event, within 90 days from receipt of notice from the Holder requesting Registration, use reasonable best efforts to effect Registration of the Registrable Securities specified in such request, together with any Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company. So long as the Company is a registrant qualified to use Form S-3, the Company shall not be obligated to take any action to effect any such registration pursuant to this Section 6.1(b) after the Company has effected one such Registration pursuant to this Section 6.1(b) and such Registration has been declared effective; provided, however, that the demand registration under this Section 6.1(b) shall be in addition to the demand registration provided for under Section 6.1(a).

(c) Notwithstanding anything to the contrary in Sections 6.1(a) and 6.1(b), the right of Managers to participate in demand registrations shall be limited as follows: No Manager may sell a number of shares in a registered offering under Section 6.1(a) or 6.1(b) that exceeds X; where X equals the number of Registrable Securities held by such Manager times the greater of Y or Z; Y equals the number of shares requested to be sold by KKR divided by the total number of shares of Registrable Securities held by KKR; and Z equals the number of shares requested to be sold by all Holders (other than Managers) divided by the total number of shares of Registrable Securities (including for this purpose shares that would be Registrable Securities but for clause (v) of Section 1.20) held by such Holders (other than Managers). This paragraph (c) shall terminate and be of no force and effect from such time, if any, as KKR ceases to own either Convertible Securities or Registrable Securities.

6.2 ***Request for Registration on Form S-3***.

(a) If a Holder or Holders (not including any Managers) of at least 20% of the outstanding shares of Registrable Securities requests that the Company file a Registration Statement on Form S-3 for an offering of shares of Registrable Securities, the anticipated aggregate price to the public of which, net of Selling Expenses, would not be less than $25,000,000, and the Company is a registrant qualified to use Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, use reasonable best efforts to effect a Registration of the Registrable Securities on such form, together with the Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company; provided, however, that the Company shall not be required to effect more than two Registrations pursuant to Section 6.2 in any 12 month period. All of the provisions of Section 6.5 shall be applicable to each Registration initiated under this Section 6.2.

(b) For each $40,000,000 in original issue price of Registrable Securities purchased by a Holder (a "***Principal Holder***"), such Principal Holder may request that the Company file a Registration Statement on Form S-3 for an offering of shares of Registrable Securities, and provided that the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000 and the Company is a registrant qualified to use Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, use reasonable best efforts to effect a Registration of the Registrable Securities on such form, together with the Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company; provided, however, that the Company shall not be required to effect more than two Registrations pursuant to Section 6.2 in any 12 month period. A Principal Holder shall have the right to demand one Registration under this Section 6.2(b) for each $40,000,000 in original issue price of Registrable Securities purchased by such Holder. All of the provisions of Section 6.5 shall be applicable to each Registration initiated under this Section 6.2.

(c) Notwithstanding anything to the contrary in Sections 6.2(a) and 6.2(b), the right of Managers to participate in demand registrations shall be limited as follows: No Manager may sell a number of shares in a registered offering under Section 6.2(a) or 6.2(b) that exceeds X; where X equals the number of Registrable Securities held by such Manager times the greater of Y or Z; Y equals the number of shares requested to be sold by KKR divided by the total number of shares of Registrable Securities held by KKR; and Z equals the number of shares requested to be sold by all Holders (other than Managers) divided by the total number of shares of Registrable Securities (including for this purpose shares that would be Registrable Securities but for clause (v) of Section 1.20) held by all Holders (other than Managers). This paragraph (c) shall terminate and be of no force and effect from such time, if any, as KKR ceases to own Convertible Securities or Registrable Securities.

6.3 ***Right of Deferral***.

(a) Notwithstanding the foregoing, the Company shall not be obligated to file a Registration Statement pursuant to Section 6:

(i) if the Company, within ten days of the receipt of the request from Holders, gives notice of its bona fide intention to effect the filing of a Registration Statement with the Commission subject to Section 7 hereof within 60 days of receipt of such request (other than to a Registration of securities in a Rule 145 transaction or with respect to an employee benefit plan), provided that the Company is actively employing all reasonable best efforts to cause such Registration Statement to become effective;

(ii) within 120 days immediately following the effective date of any Registration Statement pertaining to the securities of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan); or

(b) Notwithstanding the foregoing, the Company shall not be obligated to file a Registration Statement pursuant to Section 5 or 6 if the Company shall furnish to the requesting Holders a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a Registration Statement to be filed in the near future, then the Company's obligation to use all reasonable best efforts to file a Registration Statement shall be deferred for a period not to exceed (i) six months with respect to a demand pursuant to Section 5, and (ii) 120 days with respect to a demand pursuant to Section 6, from the receipt of the request to file such registration by such Holders; provided, however, that the Company shall not exercise the deferral rights contained in these Sections 6.3(a)(i) and 6.3(b) more than once in any 12-month period.

6.4 ***Registration of Other Securities in Demand Registration***. Any Registration Statement filed pursuant to the request of the Holders under this Section 6 may, subject to the provisions of Section 6.5, include securities of the Company other than Registrable Securities.

6.5 ***Underwriting in Demand Registration***.

(a) ***Notice of Underwriting***. If the Holders intend to distribute the Registrable Securities covered by their request made pursuant to this Section 6 by means of an underwriting, they shall so advise the Company as a part of their request, and the Company shall include such information in the notice referred to in Sections 6.1 and 6.2.

The right of any Holder to Registration pursuant to Section 6 shall be conditioned upon such Holder's agreement to participate in such underwriting and the inclusion of such Holder's eligible Registrable Securities in the underwriting.

(b) ***Selection of Underwriter in Demand Registration***. If a Registration requested pursuant to Section 6.1 or 6.2 is to be underwritten, the Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement and related agreements with the representative ("***Underwriter's Representative***") of the underwriter or underwriters selected for such underwriting by the Holders of a majority of the Registrable Securities being registered by the Holders and reasonably acceptable to the Company.

(c) ***Marketing Limitation in Demand Registration***. If the Underwriter's Representative advises the Holders in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, then the number of shares of Registrable Securities that may be included in the Registration and underwriting shall be allocated among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the Registration Statement. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 6.5(c) shall be included in such Registration Statement.

(d) ***Right of Withdrawal in Demand Registration***. If any Holder of Registrable Securities disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by notice to the Company, the Underwriter's Representative and the Holders requesting Registration delivered at least ten days prior to the effective date of the Registration Statement. The securities so withdrawn shall also be withdrawn from the Registration Statement.

7. ***Piggyback Registration***.

7.1 ***Notice of Piggyback Registration and Inclusion of Registrable Securities***; ***Special Limitation for Managers.***

(a) Subject to the terms of this Agreement, if the Company decides to Register any of its Common Stock on a form that would be suitable for a registration of Registrable Securities, whether pursuant to a demand registration contemplated by this Agreement or otherwise, the Company will: (i) promptly give each Holder notice thereof (which shall include a list of the jurisdictions in which the Company intends to attempt to qualify such securities under the applicable Blue Sky or other state securities laws) and (ii) subject to Section 7.2, include in such Registration (and any related qualification under Blue Sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a notice delivered to the Company by any Holder within 20 days after delivery of such notice from the Company.

(b) Notwithstanding anything to the contrary in Section 7.1(a), the right of Managers to participate in demand registrations shall be limited as follows: No Manager may sell a number of shares in a registered offering under Section 7.1 that exceeds X; where X equals the number of Registrable Securities held by such Manager times the greater of Y or Z; Y equals the number of shares requested to be sold by KKR divided by the total number of shares of Registrable Securities held by KKR; and Z equals the number of shares requested to be sold by all Holders (other than Managers) divided by the total number of shares of Registrable Securities (including for this purpose shares that would be Registrable Securities but for clause (v) of Section 1.20) held by all Holders (other than the Managers). This paragraph (c) shall terminate and be of no force and effect from such time, if any, as KKR ceases to own Convertible Securities or Registrable Securities.

7.2 ***Underwriting in Piggyback Registration***.

(a) ***Notice of Underwriting in Piggyback Registration***. If the Registration of which the Company gives notice is for a Registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the notice given pursuant to Section 7.1. In such event, the right of any Holder to Registration shall be conditioned upon such underwriting and the inclusion of such Registrable Securities in such underwriting to the extent provided in this Section 7. All Holders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement and related agreements with the Underwriter's Representative for such offering. The Holders shall have no right to participate in the selection of the underwriters for an offering pursuant to this Section 7.

(b) ***Marketing Limitation in Piggyback Registration***. If the Underwriter's Representative advises the Holders seeking registration of Registrable Securities pursuant to this Section 7 in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, the Underwriter's Representative (subject to the allocation priority set forth in Section 7.2(c)) may:

(i) in the case of the Company's initial Registered public offering, exclude some or all of the Registrable Securities from such registration and underwriting; and

(ii) in the case of any Registered public offering subsequent to the initial public offering, limit the number of shares of Registrable Securities to be included in such Registration and underwriting to not less than 30% of the securities included in such Registration.

(c) ***Allocation of Shares in Piggyback Registration***. If the Underwriter's Representative limits the number of shares to be included in a Registration pursuant to Section 7.2(b), the number of shares to be included in such Registration shall be allocated among all Holders, in proportion, as nearly as practicable, to the respective amounts of Registrable Securities which such Holders hold at the time of filing the Registration Statement. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 7.2(c) shall be included in the Registration Statement.

(d) ***Withdrawal in Piggyback Registration***. If any Holder disapproves of the terms of any such underwriting, such person may elect to withdraw therefrom by notice to the Company and the Underwriter's Representative delivered at least ten days prior to the effective date of the Registration Statement. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such Registration.

8. ***Expenses of Registration***. All Registration Expenses incurred in connection with Registrations pursuant to Section 5, 6.1, 6.2 and 7, shall be borne by the Company. All Registration Expenses incurred in connection with any other Registration, qualification, or compliance, shall be apportioned among the Company and the Holders of the securities so registered on the basis of the number of shares so registered. Notwithstanding the above, the Company shall not be required to pay for any expenses of any Registration proceeding begun pursuant to Section 6 if the Registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (which Holders shall bear such expenses), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one Registration pursuant to Section 6; provided, however, that if at the time of such withdrawal, the Holders have learned of a Material Adverse Event not known to the Holders at the time of their request, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 6. All Selling Expenses shall be borne by the holders of the securities Registered pro rata on the basis of the number of shares Registered.

9. ***Termination of Registration Rights***. The rights to cause the Company to register securities granted under Sections 6 and 7 of this Agreement and to receive notices pursuant to Section 7 of this Agreement shall terminate, with respect to each Holder, on the earlier of (i) the twelfth anniversary of the date that the first share of Series B Preferred Stock is sold and issued by the Company, and (ii) with respect to each Holder if such Holder is eligible to sell all of such Holder's Registrable Securities under Rule 144 of the Securities Act (excluding Rule 144(k) thereunder) within any three month period without volume limitations.

10. ***Registration Procedures and Obligations***. Whenever required under this Agreement to effect any Registration of securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the Commission a Registration Statement with respect to such securities and use its reasonable best efforts to cause such Registration Statement to become effective, and, in the case of a Registration pursuant to Section 6 or Section 7, upon the request of the sellers of a majority of the Registrable Securities registered thereunder, keep such Registration Statement effective for up to two years.

(b) Furnish to each seller of Registrable Securities a copy of any information contained in the Registration Statement about such seller for the purpose of allowing the seller to verify the information.

(c) Prepare and file as expeditiously as reasonably practicable with the Commission such amendments and supplements to such Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement.

(d) Furnish to the sellers of Registrable Securities such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(e) Use its reasonable best efforts to register and qualify the Registrable Securities covered by such Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the sellers of Registrable Securities, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business in any jurisdiction where it is not so qualified or to file a general consent to service of process in any such states or jurisdictions, and provided further that in the event any jurisdiction in which the securities shall be qualified imposes a non-waivable requirement that expenses incurred in connection with the qualification of the securities be borne by selling stockholders, such expenses shall be payable pro rata by selling stockholders.

(f) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement and related agreements, in usual and customary form, with the managing underwriter of such offering. Each seller of Registrable Securities participating in such underwriting shall also enter into and perform its obligations under such an agreement and related agreements.

(g) Promptly notify each seller of Registrable Securities covered by such Registration Statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(h) Provide a transfer agent and registrar for all securities registered pursuant to such Registration Statement and a CUSIP number for all such securities, in each case not later than the effective date of such registration.

(i) Furnish, at the request of any Holder requesting Registration of Registrable Securities pursuant to this Agreement, on the date that such Registrable Securities are delivered for sale in connection with a Registration pursuant to this Agreement, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such Registration, in form and substance as is customarily given to underwriters (with an information copy provided to each Holder selling Registrable Securities) in an underwritten public offering, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters (with an information copy provided to each holder of Registrable Securities).

(j) Use all reasonable best efforts to list the securities covered by such Registration Statement with NASDAQ or any securities exchange on which the Common Stock of the Company is then listed, or NASDAQ or such securities exchange as shall be selected by the Company.

(k) Notify each seller of Registrable Securities under such Registration Statement of (i) the effectiveness of such Registration Statement, (ii) the filing of any post-effective amendments to such Registration Statement, or (iii) the filing of a supplement to such Registration Statement.

(l) Make available for inspection upon reasonable notice during the Company’s regular business hours by each seller of Registrable Securities, 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 material 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. Each seller of Registrable Securities agrees to use the same degree of care as such seller uses to protect its own confidential information, but in no event less than reasonable care, to keep confidential

any information furnished to it by the Company pursuant to this Subsection 10(l) for a period of 3 years (so long as such information is not in the public domain); provided, however, such seller's obligation to keep information confidential under this Subsection 10(l) shall not apply (a) to information which such seller learns from a third party with the right to make such disclosure, provided the seller complies with the restrictions imposed by the third party, (b) to information which is in seller's possession prior to the time of disclosure by the Company and not acquired by seller under a confidentiality obligation, (c) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) the seller is required to disclose such information by law or a governmental regulatory authority, (d) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) seller is required to disclose such information by court order, and (e) to information disclosed to any partner, subsidiary, parent, legal counsel or advisor of such seller for the purpose of evaluating or monitoring its investment in the Company. Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

(m) Cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the Holders or the managing underwriter in any underwritten offering and otherwise to facilitate, cooperate with, and participate in each underwritten offering.

(n) Cooperate with each seller of Registrable Securities and each underwriter or agent, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the National Association of Securities Dealers, Inc.

11. ***Information Furnished by Holder***. It shall be a condition precedent of the Company's obligations under Sections 6 and 7 of this Agreement that each Holder holding Registrable Securities included in any Registration furnish to the Company such information regarding such Holder and the distribution proposed by such Holder(s) as the Company may reasonably request.

12. ***Indemnification***.

12.1 ***Company's Indemnification of Holders***. To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors, and constituent partners and members, legal counsel for the Holders, and each person controlling such Holder, with respect to which Registration, qualification, or compliance of Registrable Securities has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter against all claims,

losses, damages, liabilities, or actions in respect thereof (collectively, "***Damages***") to the extent such Damages arise out of or are based upon any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or other document (including any related Registration Statement) incident to any such Registration, qualification, or compliance, or are based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to action or inaction required of the Company in connection with any such Registration, qualification, or compliance; and the Company will reimburse each such Holder, each such underwriter, and each person who controls any such Holder or underwriter, for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action; provided, however, that the indemnity contained in this Section 12.1 shall not apply to amounts paid in settlement of any such Damages if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld or delayed); and provided, further, that the Company will not be liable (i) in any such case to the extent that any such Damages arise out of or are based upon any untrue statement or omission based upon written information furnished to the Company by such Holder, underwriter, or controlling person and stated to be for use in connection with the offering of securities of the Company or (ii) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), if such untrue statement or alleged untrue statement or omission or alleged omission was contained in a preliminary prospectus and corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the person asserting any such loss, claim, damage, liability or action in any case in which such delivery is required by the Securities Act.

12.2 ***Holder's Indemnification of Company***. To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such Registration, qualification or, compliance is being effected pursuant to this Agreement, indemnify and hold harmless the Company, each of its directors and officers, each legal counsel and independent accountant of the Company, each underwriter, if any, of the Company's securities covered by such a Registration Statement, each person who controls the Company or such underwriter within the meaning of the Securities Act, and each other seller of Registrable Securities and each of its officers, directors, and constituent partners, and each person controlling such other seller, against all Damages arising out of or based upon any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular, or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by such Holder of any rule or

regulation promulgated under the Securities Act applicable to such Holder and relating to action or inaction required of such Holder in connection with any such Registration, qualification, or compliance, and will reimburse the Company, such other sellers of Registrable Securities, such directors, officers, partners, persons, law and accounting firms, underwriters or control persons for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use in connection with the offering of securities of the Company, provided, however, that the indemnity contained in this Section 12.2 shall not apply to amounts paid in settlement of any such Damages if settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld or delayed); and provided, further, that each Holder's liability under this Section 12.2 shall not exceed such Holder's net proceeds from the offering of securities made in connection with such Registration.

12.3 ***Indemnification Procedure***. Promptly after receipt by an indemnified party under this Section 12 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 12, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim; provided, however, that the indemnifying party shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld or delayed; provided further, however, that if either party reasonably determines that there may be a conflict between the position of the Company and the Investors in conducting the defense of such action, suit, or proceeding by reason of recognized claims for indemnity under this Section 12, then counsel for such party shall be entitled to conduct the defense to the extent reasonably determined by such counsel to be necessary to protect the interest of such party. The failure to notify an indemnifying party promptly of the commencement of any such action, if prejudicial to the ability of the indemnifying party to defend such action, shall relieve such indemnifying party, to the extent so prejudiced, of any liability to the indemnified party under this Section 12, but the omission so to notify the indemnifying party will not relieve such party of any liability that such party may have to any indemnified party otherwise than under this Section 12.

12.4 ***Contribution***. If the indemnification provided for in this Section 12 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any Damages referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or

payable by such indemnified party as a result of such Damages in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such Damages as well as any other relevant equitable considerations; provided, however, that in no event shall any contribution by a Holder under this Section 12.4 exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

12.5 ***Conflicts***. Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

12.6 ***Survival of Obligations***. The obligations of the Company and Holders under this Section 12 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement or otherwise.

13. ***Limitations on Registration Rights Granted to Other Securities***. From and after the date of this Agreement, so long as at least 10,000,000 shares of the Convertible Securities (including shares of Common Stock issued upon conversion thereof and as adjusted for combinations, consolidations, subdivisions, stock splits and the like with respect to such shares) remain issued and outstanding, the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company providing for the granting to such holder of (a) any Registration rights or (b) any information rights that are superior to or on parity with the information rights granted to the Holders under this Agreement, except that, with the consent of the Holders (excluding Defaulting Investors) holding at least 55% of the Registrable Securities then held by the Holders (excluding Defaulting Investors), additional persons may be added as parties to this Agreement with regard to any or all securities of the Company held by them. Any such additional parties shall execute a counterpart of this Agreement, and upon execution by such additional parties and by the Company, shall be considered a Holder for all purposes of this Agreement and any Common Stock held by them or issued or issuable upon conversion of any securities held by them, and any Common Stock issued (or issuable upon conversion or exercise of any warrant, right or other security which is issued) upon stock dividends, subdivisions, stock splits, recapitalization, merger or other distributions with respect to, or in exchange for, or in replacement of, such securities identified in this clause, excluding, however, any securities previously sold to the public and any securities sold by a person in a transaction in which its rights under this

Agreement are not assigned, shall be considered Registrable Securities. The additional parties and the additional Registrable Securities shall be identified in an amendment to Exhibit A hereto.

14. ***Transferability***.

14.1 ***Limitations on Transferability***. Each Investor covenants that in no event will it dispose of any of the Convertible Securities or Registrable Securities (other than pursuant to Rule 144 promulgated by Commission under the Securities Act ("***Rule 144***") or other exemption from registration, or except in connection with an Investor's exercise of its Registration rights under this Agreement) unless and until (a) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (b) if reasonably requested by the Company, the Investor shall have furnished the Company with an opinion of counsel reasonably satisfactory in form and substance to the Company and the Company's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken. Notwithstanding the limitations set forth in the foregoing sentence, if the Investor is a partnership or limited liability company it may transfer the Convertible Securities or Registrable Securities to its constituent partners or members or its Affiliates, or a retired partner or member of such partnership or limited liability company who retires after the date hereof, or to the estate of any such partner or member or retired partner or retired member or transfer by gift, will, or intestate succession to any such partner's or member's spouse, domestic partner, lineal descendants or ancestors without the necessity of registration or opinion of counsel if the transferee agrees in writing to be subject to the terms of the Transactional Agreements, as applicable, to the same extent if such transferee were an Investor; provided, however, that Investor hereby covenants not to effect such transfer if such transfer either would invalidate the securities laws exemptions pursuant to which the Convertible Securities or Registrable Securities were originally offered and sold or would itself require registration and/or qualification under the Securities Act or applicable state securities laws. Notwithstanding the foregoing, an Investor who is a Manager shall not dispose of any Convertible Securities or Registrable Securities in contravention of the Transactional Agreements (as defined herein). Each certificate evidencing the Convertible Securities or Registrable Securities transferred as provided above shall bear the appropriate restrictive legend set forth in Section 5.1 of the Purchase Agreement, except that such certificate shall not bear such legend if the transfer was made in compliance with Rule 144 or if the opinion of counsel referred to above is to the further effect that such legend is not required in order to establish compliance with any provisions of the Securities Act.

14.2 ***Transfer of Rights***. The rights to information under Sections 2, the right of first refusal under Section 3 and the right to cause the Company to Register

securities granted by the Company to the Holders under Sections 6 and 7 of this Agreement may be assigned by any Investor or its Affiliates to a transferee or assignee of any Convertible Securities or Registrable Securities not sold to the public acquiring the lesser of (a) at least 50% of the Registrable Securities and Convertible Securities then held by such Investor or its Affiliates with respect to the first transfer by such Investor or its Affiliates to a non-Affiliate, 100% of the Registrable Securities and Convertible Securities then held by such Investor or its Affiliates with respect to any subsequent transfer by such Investor or its Affiliates to a non-Affiliate, or 100% of the Registrable Securities and Convertible Securities held by a transferee or assignee of a Holder to a non-Affiliate of such transferee or assignee, and (b) at least 2,000,000 shares (or such lesser number of shares as would be held by an Investor who is not a Defaulting Investor, who has a Total Capital Commitment of $2,727,200 as defined in the Purchase Agreement, and who has not sold any shares acquired under the Purchase Agreement) of the Convertible Securities or Registrable Securities (as adjusted for combinations, consolidations, subdivisions, stock splits and the like with respect to such shares) to a non-Affiliate; provided, however, that (i) the Company must receive notice prior to the time of said transfer, stating the name and address of said transferee or assignee and identifying the securities with respect to which such rights are being assigned, (ii) the Board of Directors must consent to the assignment, which consent shall not be unreasonably withheld, and (iii) such transferee or assignee must agree in writing to be bound by the terms and conditions of this Agreement. Notwithstanding the limitation set forth in the foregoing sentence respecting the minimum number of shares which must be transferred, any Holder which is a corporation, partnership or limited liability company may transfer such Holder's rights to information under Section 2, right of first refusal under Section 3 and Registration rights under Sections 6 and 7 to such Holder's Affiliates, as the case may be, without restriction as to the number or percentage of shares acquired by any such Affiliates.

15. ***Market Standoff***. Each Holder hereby agrees that, if so requested by the Company and the Underwriter's Representative (if any), such Holder shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Registrable Securities or other securities of the Company ("***Market Standoff***") without the prior written consent of the Company and the Underwriter's Representative for such period of time (a) not to exceed 180 days following the effective date of a Registration Statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Holders of a proposed follow-on offering pursuant to Section 7.1 (including Registrations initiated pursuant to Section 6) and ending 90 days after the effective date of the Registration Statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that a Holder shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Holder has agreed to a Market

Standoff. The obligations of the Holders under this Section 15 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, or director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

16. ***Conversion of Preferred Stock***. The Registration rights of the Holders of the Registrable Securities set forth in this Agreement are conditioned upon the conversion of the Registrable Securities with respect to which registration is sought into Common Stock immediately prior to the closing of the offering of such Registrable Securities pursuant to an effective Registration Statement.

17. ***Reports Under the Exchange Act***. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the Commission that may at any time permit a Holder to sell securities of the Company to the public without Registration or pursuant to a registration on Form S-3, the Company agrees, for as long as a Holder holds Registrable Securities, to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the first Registration Statement filed by the Company for the offering of its securities to the public;

(b) take such action as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first Registration Statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) 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;

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, promptly upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first Registration Statement filed by the Company), the Securities Act, and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the Commission which permits the selling of any such securities without Registration or pursuant to such form; and

(e) at any time, at the request of any Holder of Registrable Securities, make available to such Holder and to any prospective transferee of such Registrable Securities the information concerning the Company described in Rule 144A(d)(4) under the Securities Act.

18. **Covenants.**

18.1 ***Confidentiality Agreements***. Unless otherwise determined by the unanimous vote of the Board of Directors, the Company shall require all future officers, directors, and employees of the Company to execute and deliver an Employee Confidential Information and Inventions Agreement in substantially the form of Exhibit 18.1.

18.2 ***Market Stand-off Agreements***. The Company shall cause all future purchasers of, and all future holders of options to purchase, shares of the Company's capital stock to execute and deliver an agreement providing for a lockup or market standoff commitment similar to the Market Standoff set forth in Section 15.

18.3 ***Stock Plans***. The Company will not sell shares of stock or grant options to employees, advisors, officers, and directors of, and consultants to, the Company except pursuant to a stock option plan or such other arrangements, contracts or plans which have been approved by the Board of Directors. Following the date on which the first share of Series B Preferred Stock was sold by the Company, except as may otherwise be determined by the Board of Directors in any particular instance, any options or shares granted or issued by the Company shall be subject to a four-year vesting or repurchase schedule, and options granted by the Company shall have an exercise price equal to the fair market value of the Company's Common Stock at the time of grant as determined by the Board of Directors.

18.4 ***Special Covenants***. Without first obtaining the affirmative vote or written consent of Investors holding a majority of the then outstanding Convertible Securities (including Common Stock issued upon conversion thereof), the Company shall not take any action that:

(a) results in the issuance of any equity securities by a subsidiary of the Company that holds or is intended to hold assets of at least $25,000,000 to any person or business entity other than the Company or any of its wholly-owned subsidiaries (other than director qualifying shares);

(b) results in the sale, transfer, or other encumbrance of assets of the Company or any subsidiary with a value of $15,000,000 or more; or

(c) provides for the incurrence of more than $15,000,000 of indebtedness, in the aggregate, by the Company or its subsidiaries.

18.5 ***Employment Agreements***. The Company will not waive any rights under the Employment Agreements without the consent of the Board of Directors.

18.6 ***Conversion Ratio***. The Company will not split, divide or combine either the Company's Series B Preferred Stock, Series B/P Preferred Stock or Series BB Preferred Stock without splitting, dividing or combining, in the same manner and to the same extent, the other such series of Preferred Stock.

18.7 ***Termination of Covenants***. Sections 18.1, 18.2,18.3, 18.4, 18.5 and 18.6 shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest to occur of (a) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of the Company's Common Stock to the public (b) such time as the Company has a class of equity securities registered under the Exchange Act, and (c) a Change of Control.

19. ***Miscellaneous***.

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

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

19.3 ***Headings***. The headings of the Sections of this Agreement are for convenience and shall not by themselves determine the interpretation of this Agreement.

19.4 ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance notice to the other parties.

19.5 ***Amendment and Waiver of Agreement***. Except as otherwise provided herein, any provision of this Agreement may be amended or waived only by a written instrument signed by the Company and persons (excluding Defaulting Investors) holding at least 60% of the Registrable Securities then held by such persons (excluding Defaulting Investors); provided, however, that (a) Section 5 and 19.5(a) may not be

amended or waived without the consent of Managers holding a majority of Registrable Securities then held by all Managers, and (b) Sections 6.1(b), 6.2(b) and 19.5(b) may not be amended or waived without the consent of all Holders who have demand rights under subsections 6.1(b) and 6.2(b). In addition, this Agreement may not be amended to increase any material financial obligations of any Investor hereunder without the prior written consent of such Investor. Any waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

19.6 ***Severability***. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

19.7 ***Entire Agreement; Successors and Assigns***. This Agreement and the Transactional Agreements (as defined below) constitute the entire agreement between the parties regarding the subject matter hereof and thereof and supersede and replace any and all prior negotiations, correspondence, understandings and agreements, including without limitation the Prior Agreement, between the parties regarding the subject matter hereof and thereof. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the Purchase Agreement and the Second Amended and Restated Right of First Refusal and Co-Sale Agreement of even date herewith among the Company and other parties identified therein, the Second Amended and Restated Voting Agreement of even date herewith among the Company and the parties identified therein, and the Employment Agreements dated as of February 18, 2004 between the Company and each of the Executives named in Section 6.10 of the Purchase Agreement, each as may be amended in accordance with its terms. Subject to the exceptions specifically set forth in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective executors, administrators, heirs, successor, and permitted assigns of the parties.

19.8 ***Aggregation***. All outstanding shares of capital stock of the Company held or acquired by an Affiliate of a Person shall be aggregated together with all other shares of capital stock held by such Person for the purpose of determining the availability of any rights under this Agreement.

19.9 ***Cumulative Remedies***. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

19.10 ***Specific Performance***. The parties hereto hereby declare that it is impossible to measure in money the damages that will accrue to a party hereto or to their heirs, personal representatives, or assigns by reason of a failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or his heirs, personal representatives, or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has an adequate remedy at law, and such person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

19.11 ***Accession; Amendment of Exhibit***. Any person that becomes an Investor as defined in the Purchase Agreement or a registered holder of a Series BB Warrant shall become a party to this Agreement by executing and delivering to the Company a counterpart signature pages to this Agreement and shall thereupon be deemed an "Investor" for all purposes of this Agreement. The number of shares of Convertible Securities, Registrable Securities owned by each Investor, and the number of shares (if any) of Series BB Preferred Stock subject to Series BB Warrants held by each Investor, as of the date hereof is set forth on Exhibit A, which exhibit may be amended from time to time by the Company upon notice to the Investors to reflect changes in the number of shares of Convertible Securities or Registrable Securities owned by the Investors; provided, however, that no such notice shall be required upon the exercise of the Series BB Warrants by any of the Investors; provided further, however, that the failure to so amend Exhibit A shall have no effect on the rights of the Investors under this Agreement.

[SIGNATURE PAGES FOLLOW]

Investors:

KKR JP LLC

By: /s/ Mike Michelson
Name: Mike Michelson
Title: Member
Address: 9 West 57th Street, 42nd Floor
New York, NY 10019

KKR JP III LLC

By: /s/ Mike Michelson
Name: Mike Michelson
Title: Member
Address: 9 West 57th Street, 42nd Floor
New York, NY 10019

Investors:

THOMA CRESSEY FUND VII, L.P.

By

TC Partners VII, LP
Its General Partner
By

Thoma Cressey Equity Partners Inc.
Its General Partner
By

/s/ Lee M. Mitchell
Lee M. Mitchell
Vice President

THOMA CRESSEY FRIENDS FUND VII, L.P.

By

TC Partners VII, LP
Its General Partner
By

Thoma Cressey Equity Partners Inc.
Its General Partner
By

/s/ Lee M. Mitchell
Lee M. Mitchell
Vice President

Investors:

CCG INVESTMENT FUND, L.P.

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
Address: c/o Golden Gate Capital
One Embarcadero Center
33rd Floor
San Francisco, CA 94111

CCG AV, LLC-SERIES C

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
Address: c/o Golden Gate Capital
One Embarcadero Center
33rd Floor
San Francisco, CA 94111

CCG ASSOCIATES-QP, LLC

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
Address: c/o Golden Gate Capital
One Embarcadero Center
33rd Floor
San Francisco, CA 94111

Investors:

CCG INVESTMENT FUND-AI, LP

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
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One Embarcadero Center
33rd Floor
San Francisco, CA 94111

CCG ASSOCIATES-AI, LLC

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
Address: c/o Golden Gate Capital
One Embarcadero Center
33rd Floor
San Francisco, CA 94111

Investors:

CCG AV, LLC-SERIES A

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
Address: c/o Golden Gate Capital
One Embarcadero Center
33rd Floor
San Francisco, CA 94111

CCG CI, LLC

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: /s/ Ken Diekroeger
Its: Managing Director
Address: c/o Golden Gate Capital
One Embarcadero Center
33rd Floor
San Francisco, CA 94111

Investors:

JAZZ INVESTORS, L.L.C.

By: Beecken Petty & Company, L.L.C.
its Manager

By: /s/ Kenneth W. O'Keefe
Kenneth W. O'Keefe,
its Managing Director

Address: c/o Beecken Petty & Company
Healthcare Equity Partners
200 W. Madison Street
Suite 1910
Chicago, IL 60606

Investors:

LEHMAN BROTHERS HEALTHCARE VENTURE CAPITAL L.P.

By: Lehman Brothers HealthCare Venture Capital Associates L.P., its General Partner

By: LB I Group Inc., its General Partner

By: /s/ Steven Berkenfeld

Steven Berkenfeld
Senior Vice President
Address: 399 Park Avenue
New York, NY 10022
Attn: Fred Steinberg

LEHMAN BROTHERS P.A. LLC

By: /s/ Steven Berkenfeld

Steven Berkenfeld
Senior Vice President
Address: 399 Park Avenue
New York, NY 10022
Attn: Fred Steinberg

LEHMAN BROTHERS PARTNERSHIP ACCOUNT 2000/2001, L.P.

By: LB I Group Inc., its General Partner

By: /s/ Steven Berkenfeld

Steven Berkenfeld
Senior Vice President
Address: 399 Park Avenue
New York, NY 10022
Attn: Fred Steinberg

Investors:

LEHMAN BROTHERS OFFSHORE PARTNERSHIP ACCOUNT 2000/2001, L.P.

By: Lehman Brothers Offshore Partners Ltd.,
its General Partner

By: /s/ Steven Berkenfeld
Steven Berkenfeld
Vice President

Address: 399 Park Avenue
New York, NY 10022
Attn: Fred Steinberg

Investors:

PROSPECT VENTURE PARTNERS II, L.P.

By: Prospect Management Co. II, LLC,
its General Partner

/s/ Dave Markland, attorney-in-fact
James Tananbaum
Managing Member

Address: 435 Tasso Street, Suite 200
Palo Alto, CA 94301

PROSPECT ASSOCIATES II, L.P.

By: Prospect Management Co. II, LLC,
its General Partner

/s/ Dave Markland, attorney-in-fact
James Tananbaum
Managing Member

Address: 435 Tasso Street, Suite 200
Palo Alto, CA 94301

Investors:

VERSANT VENTURE CAPITAL II, L.P.

By: Versant Ventures II, L.L.C.
its General Partner

By: /s/ Samuel D. Colella
Samuel D. Colella
Managing Director

Address: 3000 Sand Hill Road
Building 4, Suite 210
Menlo Park, CA 94025

VERSANT SIDE FUND II, L.P.

By: Versant Ventures II, L.L.C.
its General Partner

By: /s/ Samuel D. Colella
Samuel D. Colella
Managing Director

Address: 3000 Sand Hill Road
Building 4, Suite 210
Menlo Park, CA 94025

Investors:

VERSANT AFFILIATES FUND II-A, L.P.

By: Versant Ventures II, L.L.C.
its General Partner

By: /s/ Samuel D. Colella
Samuel D. Colella
Managing Director

Address: 3000 Sand Hill Road
Building 4, Suite 210
Menlo Park, CA 94025

Investors:

BVCF IV, L.P.

By: Adams Street Partners, LLC,
its General Partner

By: /s/ Terry Gould
Terry Gould
Partner

Address: One North Wacker Drive
Suite 2200
Chicago, IL 60606

ADAMS STREET V, L.P.

By: Adams Street Partners, LLC,
its General Partner

By: /s/ Terry Gould
Terry Gould
Partner

Address: One North Wacker Drive
Suite 2200
Chicago, IL 60606

Investors:

CARDINAL FUND I, L.P.

By: Cardinal Management I, L.P., General Partner
By: Cardinal MGP, L.L.C., General Partner

By: /s/ John H. Fant
Name: John H. Fant
Title: Vice President
Address: 201 Main Street, Suite 2415
Fort Worth, TX 76102
Attn: Ray Pinson

FW JAZZ PHARMA INVESTORS, L.P.
By: Group VI, 31, L.L.C., General Partner

By: /s/ John H. Fant
Name: John H. Fant
Title: Vice President
Address: 201 Main Street, Suite 3100
Fort Worth, TX 76102
Attn: John H. Fant

Investors:

EGS PRIVATE HEALTHCARE PARTNERSHIP II, L.P.

By: EGS Private Healthcare Investments, L.L.C.,
its General Partner

By: /s/ Abhijeet Lele
Abhijeet Lele,
Member of Board of Managers
Address: 105 Rowayton Ave.
Rowayton, CT 06853

EGS PRIVATE HEALTHCARE INVESTORS II, L.P.

By: EGS Private Healthcare Investments, L.L.C.,
its General Partner

By: /s/ Abhijeet Lele
Abhijeet Lele,
Member of Board of Managers
Address: 105 Rowayton Ave.
Rowayton, CT 06853

Investors:

EGS PRIVATE HEALTHCARE CANADIAN PARTNERS, L.P.

By: EGS Private Healthcare Investments, L.L.C.,
its General Partner,

By: /s/ Abhijeet Lele
Abhijeet Lele,
Member of Board of Managers

Address: 105 Rowayton Ave.
Rowayton, CT 06853

EGS PRIVATE HEALTHCARE PRESIDENTS FUND, L.P.

By: EGS Private Healthcare Investments, L.L.C.,
its General Partner

By: /s/ Abhijeet Lele
Abhijeet Lele,
Member of Board of Managers

Address: 105 Rowayton Ave.
Rowayton, CT 06853

Dated: June 24, 2005

/s/ Samuel Saks
Samuel Saks

Dated: June 24, 2005

/s/ Bruce Cozadd
Bruce Cozadd

Dated: June 24, 2005

/s/ Robert Myers
Robert Myers

Dated: June 24, 2005

/s/ Janne Wissel
Janne Wissel

Dated: June 24, 2005

/s/ Matthew K. Fust
Matthew K. Fust

Investors:

WAUD CAPITAL PARTNERS, L.P.

By: Waud Capital Partners, L.L.C.
Its: General Partner

By: /s/ Reeve B. Waud
Reeve B. Waud
Managing Partner
Address: 560 Oakwood Avenue, Suite 203
Lake Forest, IL 60045

WAUD CAPITAL AFFILIATES, L.L.C.

By: /s/ Reeve B. Waud
Reeve B. Waud
Managing Member
Address: 560 Oakwood Avenue, Suite 203
Lake Forest, IL 60045

Investors:

DEEP COVE MEZZANINE, LLC

By: /s/ Reeve B. Waud
Reeve B. Waud
Manager
Address: 560 Oakwood Avenue, Suite 203
Lake Forest, IL 60045

Investors:

LERNER ENTERPRISES, L.P.

By: Oak Hill Advisors, L.P.
as advisor and attorney-in-fact to
Lerner Enterprises, L.P. (OHP account)

By: /s/ Glenn K. August
Name: Glenn K. August
Title: President

Investors:

OAK HILL CREDIT ALPHA FUND, LP

By: Oak Hill Credit Alpha GenPar, L.P.,
Its General Partner

By: Oak Hill Credit Alpha MGP, LLC,
Its General Partner

By: /s/ Glenn K. August
Name: Glenn K. August
Title: Managing Member

Investors:

LB I GROUP INC.

By: /s/ Jeffrey A. Ferrell
Name: Jeffrey A. Ferrell
Title: Vice President

With Notices to:

Lehman Brothers
399 Park Avenue
9th Floor
New York, NY 10022
Attn: Jeffrey A. Ferrell
Fax: 646-758-5022

Investors:

KKR TRS HOLDINGS, INC.

By: /s/ Barbara J. S. McKee
Name: Barbara J. S. McKee
Title: Authorized Signatory

With Notices to:

KKR Financial Corp.
4 Embarcadero Center, Suite 2050
San Francisco, CA 94111
Attn: Barbara J.S. McKee
Fax: 415-391-3077

Investors:

GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated
its Investment Manager

By: /s/ Michael M. Pastore
Name: Michael M. Pastore, Vice President

With Notices to:

General Electric Pension Trust
c/o GE Asset Management Incorporated
3001 Summer Street
P.O. Box 7900
Stamford, CT 06904-7900
Fax: 203 326-7903
Attention: Daniel L. Furman

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

Company:

JAZZ PHARMACEUTICALS, INC.
a Delaware Corporation

By: /s/ Carol A. Gamble
Carol A. Gamble
Senior Vice President and General Counsel

Exhibit A

SCHEDULE OF INVESTORS

Name and Address	Securities
KKR JP LLC 9 W. 57th Street, 42nd Floor New York, NY 10019	94,932,531 shares of Series B/P Preferred Stock
KKR JP III LLC 9 W. 57th Street, 42nd Floor New York, NY 10019	403,344 shares of Series B/P Preferred Stock
Thoma Cressey Fund VII, L.P. Sears Tower, 92nd Floor 233 South Wacker Drive Chicago, IL 60606	21,662,348 shares of Series B Preferred Stock
Thoma Cressey Friends Fund VII, L.P. Sears Tower, 92nd Floor 233 South Wacker Drive Chicago, IL 60606	338,237 shares of Series B Preferred Stock
CCG Investment Fund, LP c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	9,521,349 shares of Series B Preferred Stock
CCG AV, LLC-Series C c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	480,987 shares of Series B Preferred Stock
CCG Associates-QP, LLC c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	523,132 shares of Series B Preferred Stock
CCG Investment Fund-AI, LP c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	127,553 shares of Series B Preferred Stock

Name and Address	Securities
CCG AV, LLC-Series A c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	127,260 shares of Series B Preferred Stock
CCG CI, LLC c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	220,006 shares of Series B Preferred Stock
Jazz Investors, LLC c/o Beecken Petty & Company Healthcare Equity Partners 200 W. Madison Street, Suite 1910 Chicago, IL 60606	14,667,057 shares of Series B Preferred Stock
Lehman Brothers HealthCare Venture Capital L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	1,833,382 shares of Series B Preferred Stock
Lehman Brothers P. A. L.L.C. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	3,509,093 shares of Series B Preferred Stock
Lehman Brothers Partnership Account 2000/2001, L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	1,581,017 shares of Series B Preferred Stock
Lehman Brothers Offshore Partnership Account 2000/2001, L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	410,036 shares of Series B Preferred Stock
Prospect Venture Partners II, L.P. 435 Tasso Street, Suite 200 Palo Alto, CA 94301	7,313,625 shares of Series A Preferred Stock 6,139,997 shares of Series B Preferred Stock

Name and Address	Securities
Prospect Associates II, L.P. 435 Tasso Street, Suite 200 Palo Alto, CA 94301	111,375 shares of Series A Preferred Stock 93,502 shares of Series B Preferred Stock
Versant Venture Capital II, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	7,223,361 shares of Series A Preferred Stock 6,064,216 shares of Series B Preferred Stock
Versant Side Fund II, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	64,559 shares of Series A Preferred Stock 54,200 shares of Series B Preferred Stock
Versant Affiliates Fund II-A, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	137,080 shares of Series A Preferred Stock 115,083 shares of Series B Preferred Stock
BVCF IV, L.P. One North Wacker Drive, Suite 2200 Chicago, IL 60606	2,200,058 shares of Series B Preferred Stock
Adams Street V, L.P. One North Wacker Drive, Suite 2200 Chicago, IL 60606	2,200,058 shares of Series B Preferred Stock
Cardinal Fund I, L.P. 201 Main Street, Suite 2415 Fort Worth, TX 76102 Attention: Ray Pinson	2,933,411 shares of Series B Preferred Stock Warrant to Purchase 86,957 shares of Series BB Preferred Stock
FW Jazz Pharma Investors, L.P. 201 Main Street, Suite 3100 Fort Worth, TX 76102 Attention: John H. Fant	1,466,706 shares of Series B Preferred Stock Warrant to Purchase 43,478 shares of Series BB Preferred Stock
EGS Private Healthcare Partnership II, L.P. 105 Rowayton Ave. Rowayton, CT 06853	2,222,679 shares of Series B Preferred Stock

Name and Address	Securities
EGS Private Healthcare Investors II, L.P. 105 Rowayton Ave. Rowayton, CT 06853	350,540 shares of Series B Preferred Stock
EGS Private Healthcare Canadian Partners, L.P. 105 Rowayton Ave. Rowayton, CT 06853	334,462 shares of Series B Preferred Stock
EGS Private Healthcare Presidents Fund, L.P. 105 Rowayton Ave. Rowayton, CT 06853	25,730 shares of Series B Preferred Stock
Samuel R. Saks	2,640,000 shares of Common Stock 150,000 shares of Series A Preferred Stock 733,352 shares of Series B Preferred Stock
Bruce C. Cozadd	1,980,000 shares of Common Stock 733,352 shares of Series B Preferred Stock
Robert M. Myers	1,047,500 shares of Common Stock 513,347 shares of Series B Preferred Stock
Janne L.T. Wissel	330,000 shares of Common Stock 733,352 shares of Series B Preferred Stock
Matthew K. Fust	330,000 shares of Common Stock 220,005 shares of Series B Preferred Stock
Carol A. Gamble	300,000 shares of Common Stock
Waud Capital Partners, L.P. 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045	5,280,141 shares of Series B Preferred Stock

Name and Address	Securities
Waud Capital Affiliates, L.L.C. 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045	586,682 shares of Series B Preferred Stock
Deep Cove Mezzanine, LLC 560 Oakwood Ave, Suite 203 Lake Forest, IL 60045	Warrants to purchase 543,478 shares of Series BB Preferred Stock
Lerner Enterprises, LLP c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 71,630 shares of Series BB Preferred Stock
LB I Group Inc. c/o Lehman Brothers 399 Park Avenue, 9th Floor New York, NY 10022	Warrants to purchase 3,369,566 shares of Series BB Preferred Stock
KKR TRS Holdings, Inc. c/o KKR Financial Corp. 4 Embarcadero Center, Suite 2050 San Francisco, CA 94111	Warrants to purchase 2,717,391 shares of Series BB Preferred Stock
General Electric Pension Trust c/o GE Asset Management Incorporated 3001 Summer Road P.O. Box 7900 Stamford, CT 06904-7900	Warrants to purchase 869,565 shares of Series BB Preferred Stock
Coast DL Funding LLC c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 443,804 shares of Series BB Preferred Stock
Oak Hill Credit Opportunities Financing, Ltd. c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 294,348 shares of Series BB Preferred Stock

Name and Address	Securities
Oak Hill Credit Alpha Finance I (Offshore), Ltd. c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 193,152 shares of Series BB Preferred Stock
Oak Hill Credit Alpha Finance I, LLC c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 62,283 shares of Series BB Preferred Stock

Exhibit 18.1

JAZZ PHARMACEUTICALS, INC.

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTIONS AGREEMENT

In partial consideration and as a condition of my employment or continued employment with Jazz Pharmaceuticals, Inc., a Delaware corporation (which together with any parent, subsidiary, affiliate, or successor is hereinafter referred to as the "***Company***"), and effective as of the date that my employment with the Company first commenced (or, if earlier, the date on which I began my discussions with the Company concerning my employment by the Company), I hereby agree as follows:

1. ***Noncompetition; At-Will Employment***. During my employment with the Company, I will perform for the Company such duties as it may designate from time to time and will devote my best efforts to the business of the Company and will not, without the prior written approval of an officer of the Company if I am not an executive officer of the Company or the Board of Directors of the Company if I am an executive officer of the Company, directly or indirectly participate in or assist any business which is a current or potential supplier, customer, or competitor of the Company. I agree that unless specifically provided in another writing signed by me and an officer of the Company, my employment by the Company is not for a definite period of time. Rather, my employment relationship with the Company is one of employment at will and my continued employment is not obligatory by either myself or the Company. Nothing in this Agreement is intended to create any employment relationship or arrangement other than "at will" employment.

2. ***Nonsolicitation***. During the term of my employment by the Company, and for twelve months thereafter, I shall not directly or indirectly, without the prior written consent of the Company, solicit, recruit, encourage or induce any employees, directors, consultants, contractors or subcontractors of the Company to leave the employ of the Company, either on my own behalf or on behalf of any other person or entity.

3. ***Confidentiality Obligation***. I will hold all Confidential Information in confidence and will not disclose, use, copy, publish, summarize, or remove from the premises of the Company any Confidential Information, except (a) as necessary to carry out my assigned responsibilities as a Company employee, and (b) upon and after termination of my employment, only as specifically authorized in writing by an officer of the Company. "***Confidential Information***" is all information related to any aspect of the business of the Company which is either information not known by actual or potential competitors of the Company or is proprietary information of the Company, whether of a technical nature or otherwise. Confidential Information includes inventions, disclosures, processes, compounds, biological materials, gene sequences, systems, methods, formulae, devices, patents, patent applications, trademarks, intellectual properties, instruments, materials, products, patterns, compilations, programs, techniques, sequences, designs,

research or development activities and plans, specifications, computer programs, source codes, costs of production, prices and other financial data, volume of sales, promotional methods, marketing plans, lists of names or classes of customers, or personnel, lists of suppliers, business plans, business opportunities, financial statements, financial models, or financial projections.

4. ***Information of Others***. I will safeguard and keep confidential the proprietary information of customers, vendors, consultants, and other parties with which the Company does business to the same extent as if it were Company Confidential Information. I will not, during my employment with the Company or otherwise, use or disclose to the Company any confidential, trade secret, or other proprietary information or material of any previous employer or other person, and I will not bring onto the Company's premises any unpublished document or any other property belonging to any former employer or third party without the written consent of that former employer or third party.

5. ***Company Property***. All papers, records, data, notes, drawings, files, documents, samples, devices, products, equipment, computer files, databases and other materials, including copies and in whatever form, relating to the business of the Company that I possess or create as a result of my Company employment, whether or not confidential, are the sole and exclusive property of the Company. In the event of the termination of my employment, I will promptly deliver all such materials to the Company and will sign and deliver to the Company the "Termination Certificate" attached hereto as Exhibit A.

6. ***Ownership of Inventions***. All inventions, ideas, designs, developments, techniques, processes, improvements, schematics, formulas, compounds, compilations, methods, sequences, algorithms, trade secrets, works of authorship, and related know-how which result from work performed by me, alone or with others, on behalf of the Company or from access to the Company Confidential Information or property whether or not patentable, copyrightable, or qualified for other protection as proprietary information or works (collectively "***Inventions***") shall be the property of the Company, and, to the extent permitted by law, shall be "works made for hire." I hereby assign and agree to assign to the Company or its designee, without further consideration, my entire right, title, and interest in and to all Inventions, other than those described in Paragraph 7 of this Agreement, including all rights to obtain, register, perfect, and enforce patents, copyrights, trademark rights and other intellectual property protection for Inventions. I will disclose promptly and in writing to the individual designated by the Company or to my immediate supervisor all Inventions which I have made or reduced to practice. During my employment and for four years after, I will assist the Company (at its expense) in every proper way to obtain and enforce patents, copyrights, trademarks and other forms of intellectual property protection on Inventions in any and all countries, including the disclosure to the Company of all pertinent information and data with

respect thereto, the execution of applications, specifications, assignments, recordations and all other instruments which the Company shall deem necessary in order to apply for, claim, obtain, maintain and transfer such rights and in order to assign and convey to the Company, its successors, assigns and nominees, the sole and exclusive rights, title and interest in and to such Inventions, and any patents, copyrights, trademarks or other intellectual property rights relating thereto.

7. ***Excluded Inventions***. Attached hereto as Exhibit B is a list of all inventions, improvements, and original works of authorship which I desire to exclude from this Agreement, each of which has been made or reduced to practice by me prior to the commencement of my employment by the Company. I understand that this Agreement requires disclosure, but not assignment, of any invention that qualifies under Section 2870 of the California Labor Code, a copy of which is attached hereto as Exhibit C.

8. ***Invention Records; Patent Applications***. I agree to create and maintain, and to make available to the Company's legal counsel, adequate and current written records of all inventions and original works of authorship made by me (alone or with others) during the term of my employment with the company. Such records will be kept in the form of notes, sketches, drawings or other appropriate format. All such records will be available to the company at all times, and will be the sole property of the Company. If the Company files an original United States patent application covering any invention of which I am a named inventor, I will receive an inventor's fee of $100. If the Company is unable, because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any patent applications or copyright or trademark registrations covering any inventions or original works of authorship assigned to the company hereunder, I hereby irrevocably appoint the Company and its authorized officers and agents as my agent and attorney-in-fact to act for me and on my behalf to execute and further the prosecution and issuance of letters patent and copyright and trademark registrations thereon, with the same legal effect as if I had executed them.

9. ***Prior Contracts***. I represent that there are no other contracts to assign inventions that are now in existence between any other person or entity and me. I further represent that I have no other employments, consultancies, or undertakings which would restrict and impair my performance of this Agreement.

10. ***Agreements with the United States Government and Other Third Parties***. I acknowledge that the Company from time to time may have agreements with other persons or with the United States Government or agencies thereof which impose obligations or restrictions on the Company regarding Inventions made during the course of work under such agreements or regarding the confidential nature of such work. I agree to be bound by all such obligations or restrictions and to take all action necessary to discharge the obligations of the Company thereunder.

11. ***Miscellaneous***.

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

(b) ***Enforcement***. If any provision of this Agreement shall be determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Agreement, shall be deemed valid, and enforceable to the full extent possible.

(c) ***Injunctive Relief; Consent to Jurisdiction***. I acknowledge and agree that damages will not be an adequate remedy in the event of a breach of any of my obligations under this Agreement. I therefore agree that the Company shall be entitled (without limitation of any other rights or remedies otherwise available to the Company and without the necessity of posting a bond) to obtain an injunction from any court of competent jurisdiction prohibiting the continuance or recurrence of any breach of this Agreement. I hereby submit myself to the jurisdiction and venue of the courts of the State of California for purposes of any such action. I further agree that service upon me in any such action or proceeding may be made by first class mail, certified or registered, to my address as last appearing on the records of the Company.

(d) ***Attorneys' Fees***. If any party seeks to enforce its rights under this Agreement by legal proceedings or otherwise, the non-prevailing party shall pay all costs and expenses of the prevailing party.

(e) ***Waiver***. The waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof.

(f) ***Binding Effect***. This Agreement shall be binding upon and shall inure to the benefit of the successors, executors, administrators, heirs, representatives, and assigns of the parties.

(g) ***Survival***. The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by the Company to any successor in interest or other assignee.

(h) ***Headings***. The Section headings herein are intended for reference and shall not by themselves determine the construction or interpretation of this Agreement.

(i) ***Severability***. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(j) ***Entire Agreement; Modifications***. This Employee Confidential Information and Inventions Agreement contains the entire agreement between the Company and the undersigned employee concerning the subject matter hereof and supersedes any and all prior and contemporaneous negotiations, correspondence, understandings, and agreements, whether oral or written, respecting that subject matter. All modifications to this Agreement must be in writing and signed by the party against whom enforcement of such modification is sought.

[Signature Page Follows]

IN WITNESS WHEREOF, I have executed this Employee Confidential Information and Inventions Agreement as of the ___ day of _____, 2007.

_____
Employee Signature

_____
Type/Print Employee's Name

Address: _____

_____

_____

Fax Number: _____

E-mail: _____

RECEIPT ACKNOWLEDGED:

JAZZ PHARMACEUTICALS, INC.

By: _____

Title: _____

EXHIBIT A

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any papers, records, data, notes, drawings, files, documents, computer files, databases, samples, devices, products, equipment, designs, computer programs, and other materials, including reproductions of any of the aforementioned items, belonging to Jazz Pharmaceuticals, Inc., its subsidiaries, affiliates, successors, or assigns (together, the "***Company***").

I further certify that I have complied with all the terms of the Company's Employee Confidential Information and Inventions Agreement signed by me, including the reporting of any Inventions (as defined therein) conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employee Confidential Information and Inventions Agreement, I will hold in confidence and will not disclose, use, copy, publish, or summarize any Confidential Information (as defined in the Employee Confidential Information and Inventions Agreement) of the Company or of any of its customers, vendors, consultants, and other parties with which it does business.

Date: _____

_____

Employee's Signature

_____

Type/Print Employee's Name

EXHIBIT B

EXCLUDED INVENTIONS, IMPROVEMENTS, AND ORIGINAL WORKS OF AUTHORSHIP

(please mark N/A and initial if not applicable)

Title	Date	Identifying Number Or Brief Description

EXHIBIT C

California Labor Code

§ 2870. Application of provision providing that employee shall assign or offer to assign rights in invention to employer.

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

Added Stats 1979 ch 1001 § 1; Amended Stats 1986 ch 346 § 1.

Exhibit 4.4

TWIST MERGER SUB, INC.

$80,000,000

15% Senior Secured Notes due June 24, 2011

GUARANTEED AND ACCOMPANIED WITH WARRANTS ISSUED BY
JAZZ PHARMACEUTICALS, INC.

SENIOR SECURED NOTE AND WARRANT PURCHASE AGREEMENT

Dated as of June 24, 2005

Table of Contents

Dated as of June 24, 2005

TO EACH PURCHASER LISTED ON THE ATTACHED
SCHEDULE A WHO IS A SIGNATORY HERETO (COLLECTIVELY WITH THEIR RESPECTIVE
SUCCESSORS AND ASSIGNS, THE "*PURCHASERS*"):

Ladies and Gentlemen:

THIS SENIOR SECURED NOTE AND WARRANT PURCHASE AGREEMENT (this "*Agreement*") is hereby entered into by and among the Purchasers, JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "*Company*"), and TWIST MERGER SUB, INC., a Delaware corporation (the "*Borrower*"), with reference to the following:

A. The Company has informed the Purchasers that the Company intends to acquire Orphan Medical, Inc., a Delaware corporation ("*Orphan Medical*"), by way of the merger (the "*Merger*") of the Borrower, a wholly-owned subsidiary of the Company, with and into Orphan Medical, with Orphan Medical becoming the surviving corporation, all pursuant to that certain Agreement and Plan of Merger by and among Orphan Medical, the Company and the Borrower, dated April 18, 2005, as amended (the "*Merger Agreement*").

B. The Purchasers have agreed, subject to the terms and conditions hereof, to furnish debt financing to the Borrower by way of the purchase of the Borrower's senior secured notes in order to provide the Company with a portion of the necessary cash required to consummate the Merger and pay for transaction costs associated therewith.

C. Under the terms of the Merger Agreement, all of the properties, rights, privileges, powers and franchises of Orphan Medical shall vest in and all of the debts, liabilities and duties (including the obligations and duties of the Borrower hereunder) shall be assumed by the Surviving Corporation (as defined in the Merger Agreement).

D. Certain capitalized terms used in this Agreement are defined in **Schedule B**; references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement. All references to the Borrower in this Agreement shall be deemed to include the Borrower both before and after taking into account the effect of the Merger such that the Borrower shall mean and include the Surviving Corporation (as defined in the Merger Agreement) and any reference to a Subsidiary of the Company shall mean and include the Borrower and any Subsidiary of the Borrower.

NOW THEREFORE, the Purchasers, the Company and the Borrower hereby agree as follows:

SECTION 1. AUTHORIZATION, SALE AND ISSUANCE OF NOTES AND WARRANTS.

Section 1.1 Authorization

(a) The Borrower has authorized the issue and sale of $80,000,000 aggregate principal amount of its 15% Senior Secured Notes (the "*Notes*", such term to include any such notes issued in substitution therefor pursuant to **Section 13** of this Agreement) due June 24, 2011. The Notes shall be substantially in the form set forth on **Exhibit A**.

(b) The Company has further authorized the issuance and sale to each Purchaser of Warrants (the "*Warrants*", such term to include any such warrants issued in substitution therefor pursuant to the terms thereof) to purchase Series BB Preferred Stock, par value $0.0001 per share, of the Company ("*BB Preferred*"), each substantially in the form set forth in **Exhibit B**.

Section 1.2 Sale and Purchase of the Notes and Warrants. Subject to the terms and conditions of this Agreement, at the Closing provided in **Section 1.3**:

(a) The Borrower hereby agrees to issue and sell to each Purchaser and each Purchaser agrees to purchase from the Company on the date of the Closing, a Note in the aggregate principal amount set forth opposite such Purchaser's name on **Schedule A** attached hereto at a purchase price of 100% of the aggregate principal amount of such Note. Each Purchaser's obligation hereunder is several and not joint with the other Purchasers' obligations such that no Purchaser shall have any obligation or liability to any Person for the performance or nonperformance by any other Purchaser hereunder.

(b) As further consideration for the purchase of the Notes by the Purchasers pursuant to **Section 1.2(a)**, and with the Company's express acknowledgement of its direct and indirect benefit received in connection with such financial accommodations, the Company agrees to issue and deliver to each Purchaser, at the Closing, a Warrant to purchase that number of shares of the BB Preferred set forth opposite such Purchaser's name on **Schedule A** attached hereto.

(c) The Borrower, the Company and each Purchaser hereby acknowledge and agree that the Note and Warrant issued in accordance with this Agreement constitute an "investment unit" for the purposes of Section 1273(c)(2)(A) of the Code. In accordance with Sections 1273(c)(2)(A) and 1273(b)(2) of the Code, the issue price of the investment unit is 100% of the aggregate principal amount of the Note set forth opposite each such Purchaser's name on **Schedule A**. Allocating that issue price between the Note and Warrant based on their relative fair market values, as required by Section 1273(c)(2)(B) of the Code and Treasury Regulation Section 1.1273-2(h)(1), results in (i) the Note having an issue price of 93.30% of the aggregate principal amount of such Note and (ii) the Warrant having a purchase price of 6.70% of the aggregate principal amount of such Note. The Borrower, the Company and each Purchaser agrees to prepare their respective federal income tax returns in a manner consistent with the foregoing agreement.

Section 1.3 Closing. The sale and issuance of the Notes and Warrants shall occur at a closing (the "*Closing*") at the offices of the Company, 3180 Porter Drive, Palo Alto, California 94304 at 10:00 a.m. local time on June 24, 2005 or on such other Business Day thereafter as may be agreed upon by the Company and the Purchasers. At the Closing:

(a) The Borrower will deliver to or at the direction of each Purchaser a Note to be purchased thereby in the form of a single Note dated the date of the Closing and registered in such Purchaser's name, against delivery by such Purchaser to the Borrower or its order of immediately available funds in the amount of the purchase price therefor by wire transfer to the account of the Paying Agent (as defined in the Merger Agreement), held in the name and for the benefit of the Borrower, identified in writing by the Company prior to the Closing.

(b) The Company will deliver to or at the direction of each Purchaser a Warrant dated the date of the Closing and registered in the name of such Purchaser, and evidencing the right of such Purchaser to purchase that number of shares of the Company's BB Preferred set forth opposite such Purchaser's name on **Schedule A**.

Section 1.4 Payment Terms of the Notes. The Notes shall bear interest, in the amounts and payable at the times set forth therein, and shall be due and payable in full on the maturity date set forth therein or as otherwise provided for under this Agreement without defense, set off or counterclaim of any sort. All payments required to be made under the Notes shall be made in the manner and to the account of each Purchaser as set forth in the Notes.

SECTION 2. COMPANY GUARANTY.

Section 2.1 Background. The Company hereby acknowledges and affirms that, as the sole beneficial owner of all of the capital stock of the Borrower, it will directly or indirectly receive certain benefits from the credit accommodations provided for under this Agreement and is therefore willing to guaranty the prompt payment and performance of the Obligations of the Borrower, on the terms set forth in this **Section 2**.

Section 2.2 Company Guaranty. For value received and in consideration for the Purchasers' execution of this Agreement and the purchase of the Notes, the Company unconditionally guarantees (a) the full and prompt payment when due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter, of all of the indebtedness and obligations of every kind and nature of the Borrower to each Purchaser, or any permitted assignee of any Purchaser, pursuant to the terms of this Agreement and the other Related Documents, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, joint or several, now or hereafter existing, or due or to become due, and howsoever owned, held or acquired by such Purchaser, whether through discount, premium, purchase, direct loan or as collateral or otherwise, and whether principal, interest, fees, costs, expenses or otherwise (including without limitation any interest, Make-Whole Amount, fees or expenses accruing following the commencement of any insolvency, receivership, reorganization or bankruptcy case or proceeding relating to the Borrower, whether or not a claim for post-petition interest, Make-Whole Amount, fees or expenses is allowed in such case or proceeding); and (b) the prompt, full and faithful discharge by the Borrower of each and every term,

condition, agreement, representation and warranty now or hereafter made by the Borrower to the Purchasers under this Agreement and the other Related Documents (all such indebtedness and obligations listed in (a) and (b) of this sentence being hereinafter referred to as the "*Obligations*"). The Company further agrees to pay all reasonable out-of-pocket costs and expenses, including, without limitation, all court costs and reasonable attorneys' fees paid or incurred by any Purchaser in collecting all or any part of the Obligations from, or in prosecuting or defending any action against, the Company. All amounts payable by the Company under this **Section 2** shall be payable upon demand and shall be made in lawful money of the United States, in immediately available funds.

Section 2.3 No Fraudulent Conveyance. It is intended that the Company's guaranty under this **Section 2** (the "*Company Guaranty*"), and any Liens granted by the Company to secure the Company Guaranty, do not constitute a "Fraudulent Conveyance" (as hereinafter defined). Consequently, the Company agrees that if the Company Guaranty, or any Liens securing the Company Guaranty, would, but for the application of this sentence, constitute a Fraudulent Conveyance, the Company Guaranty and each such Lien shall be valid and enforceable only to the maximum extent that would not cause the Company Guaranty or such Lien to constitute a Fraudulent Conveyance, and the Company Guaranty or the other Related Documents providing for such Lien shall automatically be deemed to have been amended accordingly at all relevant times. For purposes hereof, "*Fraudulent Conveyance*" means a fraudulent conveyance under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the provisions of any applicable fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

Section 2.4 Unconditional Guaranty. The Company hereby agrees that its obligations under the Company Guaranty shall be unconditional, irrespective of (i) the validity or enforceability of the Obligations or any part thereof, or of any Notes, Related Documents or other document evidencing all or any part of the Obligations, (ii) the absence of any attempt to collect from the Borrower or any other guarantor of all or any part of the Obligations or other action to enforce the same, (iii) the waiver or consent by any Purchaser with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by the Borrower or any other guarantor of all or any part of the Obligations, and delivered to such Purchaser, (iv) failure by any Purchaser or the Collateral Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations or any guaranty, (v) the existence or nonexistence of any defenses which may be available to the Borrower or any other guarantor of all or any part of the Obligations, (vi) the institution of any proceeding under Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended (the "*Bankruptcy Code*"), or any similar proceeding, by or against the Borrower or any other guarantor, or any Purchaser's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code, (vii) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code (or use of cash collateral under Section 363 of the Bankruptcy Code), (viii) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the Purchasers' claim(s) for repayment of the Obligations, or (ix) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor other than the indefeasible payment in full of all Obligations.

Section 2.5 Waiver. The Company hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of the Borrower or other guarantors, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that the Company Guaranty will not be discharged, except by complete and indefeasible payment and performance of the Obligations. The Company further waives notice of (i) acceptance of the Company Guaranty, (ii) the existence or incurring from time to time of any Obligations guarantied hereunder, and (iii) the existence of any Default or Event of Default, the making of demand, nonpayment, or the taking of any action by any Purchaser or the Collateral Agent, under this Agreement or any of the other Related Documents. At any time that the Notes become due and payable, whether by maturity or acceleration, any holder of a Note may, in its sole election (regardless of whether the liability of Borrower or any other guarantor of all or any part of the Obligations has matured or may then be enforced), proceed directly and at once, without notice, against the Company to collect and recover the full amount or any portion of the Obligations, without first proceeding against the Borrower or any other guarantor, or against any security or collateral for the Obligations. The Company agrees that the Company Guaranty constitutes a guarantee of payment when due and not of collection.

Section 2.6 Authorization. The Purchasers and the Collateral Agent are hereby authorized, without notice or demand and without affecting the liability of the Company hereunder, at any time and from time to time to (i) renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, the Obligations or otherwise modify, amend or change the terms of this Agreement, any Note or any other Related Document (subject to the terms hereof and thereof), now or hereafter executed by the Borrower, the Company or any other guarantor and delivered to any of the Purchasers; (ii) accept partial payments on the Obligations; (iii) take and hold security or collateral for the payment of the Obligations guaranteed hereby, or for the payment of the Company Guaranty, or for the payment of any other guaranties of the Obligations, and exchange, enforce, waive and release any such security or collateral; (iv) apply such security or collateral and direct the order or manner of sale or other disposition thereof as in its discretion it may determine; and (v) settle, release, compromise, collect or otherwise liquidate the Obligations and any security or collateral therefor in any manner, without affecting or impairing the obligations of the Company hereunder.

Section 2.7 Responsibility. The Company hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other guarantors of any instrument or document evidencing all or any part of the Obligations and of all other circumstances bearing upon the risk of nonpayment of the Obligations or any part thereof, and the Company hereby agrees that neither the Purchasers nor the Collateral Agent shall have any duty to advise the Company of information known to any Purchaser or the Collateral Agent regarding such condition or any such circumstances or to undertake any investigation. If any of the Purchasers or the Collateral Agent, each in their respective discretion, undertakes at any time or from time to time to provide any such information to the Company, such Purchaser or the Collateral Agent, as applicable, shall be under no obligation to update any such information or to provide any such information to the Company on any subsequent occasion. The Company further acknowledges that the Company has examined or had the opportunity to examine this Agreement and the other Related Documents, and waives any defense which may exist resulting from the Company’s failure to receive or examine at any time this Agreement or the other Related Documents.

Section 2.8 Consent. The Company consents and agrees that none of the Purchasers or the Collateral Agent shall be under any obligation to marshal any assets in favor of the Company or against or in payment of any or all of the Obligations. The Company further agrees that, to the extent that the Borrower, the Company or any other Person makes a payment or payments to the Purchasers, or any Purchaser receives any proceeds of collateral, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to the Borrower, its estates, trustees, receivers or any other Person, including, without limitation, the Company, under any bankruptcy law, state or federal law, common law or equitable theory, then to the extent of such payment or repayment, the Obligations or the part thereof which has been paid, reduced or satisfied by such amount, and the Company's obligations hereunder with respect to such portion of the Obligations, shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred.

Section 2.9 Transfer. Subject to the provisions of **Section 13**, any Purchaser may sell or assign the Obligations or any part thereof, or grant participations therein, pursuant to the terms of this Agreement and in any such event, each and every immediate or remote assignee or holder of, or participant in, all or any of the Obligations shall have the right to enforce the Company Guaranty, by suit or otherwise, for the benefit of such assignee, holder or participant, as fully as if herein by name specifically given such right, but each Purchaser shall have an unimpaired right, prior and superior to that of any such assignee, holder or participant, to enforce the Company Guaranty for the benefit of such Purchaser, as to any part of the Obligations retained by such Purchaser.

Section 2.10 Continuation. The Company Guaranty shall continue in full force and effect (and may not be revoked or terminated), and the Purchasers shall be entitled to purchase the Notes on the faith hereof, until such time as all of the Obligations have been indefeasibly paid and satisfied in full.

Section 2.11 Subrogation. Any and all rights of any nature of the Company to subrogation, contribution, reimbursement or indemnity and any right of the Company to recourse to any assets or property of, or payment from, the Borrower or any other guarantor of all or any part of the Obligations as a result of any payments made or to be made hereunder for any reason, are hereby unconditionally waived by the Company, and the Company shall not at any time exercise any of such rights unless and until all of the Obligations have been indefeasibly paid and satisfied in full. Any payments received by the Company in violation of this **Section 2.11** shall be held in trust for, and immediately remitted to, the Purchasers.

Section 2.12 Subordination. The payment of any and all of indebtedness, liabilities and obligations of Borrower to the Company of every kind or nature, whether joint or several, due or to become due, absolute or contingent, now existing or hereafter arising, and whether principal, interest, fees, costs, expenses or otherwise (collectively, the "*Subordinated Debt*"), is expressly subordinated to the Obligations. So long as an Event of Default exists, no payment of any kind (by voluntary payment, prepayment, acceleration, setoff or otherwise) of any portion of the Subordinated Debt may be made by Borrower or received or accepted by the Company at any time. Until such time as the Obligations have been indefeasibly paid and satisfied in full, the Company will not (i) obtain any Lien on any property of the Borrower to secure the

Subordinated Debt, or (ii) commence any lawsuit, action or proceeding of any kind against the Borrower to recover all or any part of the Subordinated Debt. Any payments received by the Company in violation of this **Section 2.12** shall be held in trust for and immediately remitted to the Purchasers.

SECTION 3. SECURITY INTERESTS.

Section 3.1 Grant of Security Interests. To secure the full and prompt payment and performance of the Obligations and the Company Guaranty, including all renewals, extensions, restructurings and refinancings of any or all of the foregoing, each of the Borrower and the Company hereby grants to the Collateral Agent, for the benefit of the holders of the Notes, a continuing Lien in and to all right, title and interest of Borrower and the Company in the following property, respectively, of the Borrower and the Company, whether now owned or existing or hereafter acquired thereby or arising and regardless of where located, including the products and proceeds thereof (all being collectively referred to as the "*Collateral*"):

i) Accounts;
ii) Deposit Accounts (as defined in the UCC);
iii) Documents of Title;
iv) Equipment;
v) General Intangibles;
vi) Inventory;
vii) Investment Property; and
viii) Other Collateral;

provided, *however*, that notwithstanding any of the other provisions set forth in this **Section 3**, this Agreement shall not constitute a grant of a security interest in (a) any ownership interests of any Foreign Subsidiary or (b) any property to the extent that such grant of a security interest is prohibited by any requirements of law of a Governmental Authority, requires a consent not obtained of any Governmental Authority pursuant to such requirement of law or is prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property or any applicable shareholder or similar agreement, except to the extent that such requirement of law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law.

Section 3.2 Perfection of Security Interests. Each of the Borrower and the Company hereby authorizes the Collateral Agent to prepare and file such financing statements or amendments thereof (including financing statements and amendments thereof describing the Collateral as "all assets" or "all personal property" or words to that effect) as the Collateral Agent or the Purchasers may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC or the Uniform Commercial Code of any applicable jurisdiction. Each of the Borrower and the Company shall, at the Collateral Agent's request, at any time and from time to time, execute and deliver to the Collateral Agent within ten (10) Business Days of such request, such documents and other agreements and instruments (and pay the cost of filing or recording the same in all public offices

deemed reasonably necessary or desirable by the Collateral Agent or the Purchasers) and do such other acts and things as the Collateral Agent may deem necessary or desirable in order to establish and maintain a valid, attached and perfected security interest in the Collateral in favor of the Collateral Agent for the benefit of the Purchasers (free and clear of all other liens, claims and rights of third parties whatsoever, whether voluntarily or involuntarily created, except as otherwise permitted by **Section 10.3**) to secure payment of the Obligations, and in order to facilitate the collection of the Collateral. Each of the Borrower and the Company irrevocably hereby makes, constitutes and appoints the Collateral Agent (and all Persons designated by the Collateral Agent for that purpose) as the Borrower's and the Company's respective true and lawful attorney and agent-in-fact to file such financing statements and other similar documents, agreements and instruments as may be necessary to preserve and perfect the Collateral Agent's security interest in the Collateral. Each of the Borrower and the Company acknowledges and agrees that the Collateral is intended to encompass all assets and property of Borrower and the Company (subject to the terms and conditions of this Agreement) and if at any time Borrower or the Company acquires any interest in any assets or property a security interest in which cannot be perfected by the filing of a financing statement in the appropriate jurisdiction or any assets or property a security interest in which can be perfected by the filing of a financing statement in the appropriate jurisdiction but that are not covered by the security interest grant set forth above (e.g., commercial tort claims, it being certified by Borrower or the Company that it has no interest in any commercial tort claims as of the Closing), then the Borrower or the Company, as appropriate, will, if reasonably requested by the Collateral Agent, cause such assets or property to become part of the Collateral and take such reasonable steps as the Collateral Agent or the Purchasers may require in accordance with this **Section 3.2**. Each of the Borrower and the Company hereby agree to give the Collateral Agent prompt notice of any commercial tort claim filed by the Company or any of its subsidiaries.

Section 3.3 Possession of Collateral and Related Matters. Until an Event of Default has occurred and is continuing, both of the Borrower and the Company shall have the right, except as otherwise provided in this Agreement, to (a) sell or lease any of their Inventory normally held thereby for any such purpose, (b) use and consume any raw materials, work in process or other materials normally held thereby for such purpose and (c) dispose of any assets to the extent permitted under **Section 10.2**. If any Inventory is in the possession or control of any warehouseman or the Company's or the Borrower's, as applicable, agents or processors, then the Borrower or the Company, as applicable, shall, upon the Collateral Agent's request, notify such warehouseman, agent or processor of the Collateral Agent's security interest in such Inventory and, upon the Collateral Agent's request, instruct them to hold all such Inventory for the Collateral Agent's account and subject to the Collateral Agent's instructions.

Section 3.4 Continuing Security Interest; Termination.

(a) This **Section 3** creates a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment or satisfaction in full of the Obligations (other than any contingent indemnity obligations), (ii) be binding upon the Borrower and the Company, and their respective successors and assigns and (iii) except to the extent that the rights of any transferor or assignor are limited by the terms of this Agreement, inure, together with the rights and remedies of the Collateral Agent, to the benefit of the Collateral Agent and the holders of Notes. The Borrower's and the Company's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in possession thereof or therefor.

(b) Upon the payment in full in cash of the Obligations (other than any contingent indemnity obligations), the security interests granted pursuant to this **Section 3** shall terminate and all rights to the Collateral shall revert to the Borrower and the Company, as applicable. Upon any such termination of the security interests hereunder, the Borrower and the Company shall each be entitled to the return, upon its request and at its expense, of such of the Collateral held by the Collateral Agent as shall not have been sold or otherwise applied pursuant to the terms hereof and the Collateral Agent will, at the Borrower's and the Company's expense, execute and deliver to the Borrower or the Company, as applicable such other documents as they shall reasonably request to evidence such termination. In connection with any transfers, sales or other dispositions of assets permitted under this Agreement or any other release of Collateral that may be required in connection with any other action which is permitted by this Agreement, the Collateral Agent will release and terminate the Liens granted under this Agreement with respect to such assets.

SECTION 4. CONDITIONS TO CLOSING.

Each Purchaser's obligation to purchase and pay for the Notes to be sold thereto at the Closing is subject to the fulfillment to such Purchaser's reasonable satisfaction, prior to or at the Closing, of the following conditions:

Section 4.1 Consummation of the Merger. All conditions necessary to consummate the Merger under the Merger Agreement shall have been satisfied or waived (provided that if such waiver is material it shall have been in a manner approved by the Purchasers), the parties to the Merger Agreement shall be prepared to consummate the Merger on the date of the Closing simultaneously with the purchase of the Notes, and each Purchaser shall have received evidence of the foregoing reasonably satisfactory to it.

Section 4.2 Closing Deliveries. The Purchasers shall have received, in form and substance reasonably satisfactory to the Purchasers, all documents, instruments, agreements, opinions and certificates identified on **Exhibit 4.2**.

Section 4.3 Additional Equity Financing. The Company shall have received during the period from April 18, 2005, up and including the date of the Closing, at least $99,999,998 (a) in gross investment proceeds by way of the issuance of additional shares of Series B Preferred Stock of the Company or (b) in cash proceeds from specific product development financing arrangements and each Purchaser shall have received evidence of the foregoing reasonably satisfactory to it

Section 4.4 Security Interests; Indebtedness; Waivers and Consents.

(a) The Purchasers shall have received the results of recent lien, tax lien, judgment and litigation searches in each relevant jurisdiction with respect to the Company and the Borrower (including, for the avoidance of doubt, as to Orphan Medical prior to the Merger) and their respective Subsidiaries, and such searches shall reveal no

Liens other than Permitted Liens or Liens that are being discharged on or prior to the consummation of the Closing pursuant to documentation reasonably satisfactory to the Purchasers.

(b) All outstanding Indebtedness of the Company and the Borrower (including, for the avoidance of doubt, Indebtedness of Orphan Medical prior to the Merger) and their respective Subsidiaries, other than Permitted Indebtedness, shall have been paid in full or otherwise discharged, all documents evidencing such Indebtedness shall have been terminated and be of no further force and effect, in each case pursuant to documentation reasonably satisfactory to the Purchasers, and each Purchaser shall have received evidence of the foregoing reasonably satisfactory to it.

(c) All waivers, approvals or consents of Governmental Authorities or other third parties as may be required by law or under contract to consummate the Merger and the transactions contemplated by this Agreement (including any necessary stockholder agreements, consents or waivers required in connection with the issuance of the Warrants) shall have been obtained (except as otherwise permitted by the Merger Agreement) and each Purchaser shall have received evidence of the foregoing reasonably satisfactory to it.

Section 4.5 Fees and Expenses. The Company or the Borrower shall have paid the fees, expenses and other amounts payable to KKR Financial Corp. and LB I Group Inc., or on their behalf, upon the Closing as provided pursuant to the Commitment Letter (including the Term Sheet attached thereto, the "*Commitment Letter*") dated April 18, 2005 delivered by KKR Financial Corp. and LB I Group Inc. and agreed and accepted by the Company, such fees and expenses to include reimbursement of legal counsel to the Purchasers as provided under the Commitment Letter.

Section 4.6 Representations and Warranties. At the time of the Closing both before and after taking into account the effect of the Merger, the representations and warranties of the Company and the Borrower in this Agreement and the Related Agreements, which are qualified by their terms as to Materiality, shall be correct and all other representations and warranties of the Company and the Borrower in this Agreement and the Related Agreements shall be correct in all material respects.

Section 4.7 Performance; No Default. Each of the Company and the Borrower shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing, and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by **Schedule 5.14**), the issue of the Warrants and the consummation of the Merger, no Default or Event of Default shall have occurred and be continuing.

Section 4.8 No Material Adverse Effect. Nothing has occurred since April 18, 2005, which could reasonably be expected to have a Material Adverse Effect (solely for this purpose, as such term is defined in the Merger Agreement).

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE BORROWER.

Each of the Company and the Borrower represents and warrants, jointly and severally, to the Purchasers that, as of the date hereof and at the Closing, both before and after giving effect to the Merger:

Section 5.1 Organization; Power and Authority. Each Credit Party is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Credit Party has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and/or the other Related Documents to which it is a party, and to perform the provisions hereof and thereof.

Section 5.2 Authorization, Etc. This Agreement and the other Related Documents, and in the case of the Borrower, the borrowing under the Notes, have been duly authorized by all necessary corporate action on the part of each Credit Party signatory thereto, and this Agreement and such other Related Documents each constitutes, and upon execution and delivery thereof, will constitute, a legal, valid and binding obligation of the each such Credit Party, as applicable, enforceable against such Credit Party, respectively, in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.3 Disclosure. This Agreement, the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company and the Borrower in connection with the transactions contemplated hereby and the financial statements listed in **Schedule 5.5**, taken as a whole, do not contain any untrue statement of a material fact or omit to state any fact necessary to make the statements therein not materially misleading in light of the circumstances under which they were made. Since December 31, 2004, there has been no change in the financial condition, operations, business or properties of the Company, the Borrower and any of their respective Subsidiaries, taken as a whole, except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company or the Borrower that would reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the other documents, certificates and other writings delivered to the Purchasers by or on behalf of the Company or the Borrower specifically for use in connection with the transactions contemplated hereby.

Section 5.4 Capitalization; Subsidiaries.

(a) The authorized capital stock of the Company consists of:

(i) 308,236,575 shares of Preferred Stock, with a par value of $0.0001, of which (A) 15,000,000 shares are designated as Series A Preferred Stock, all of which are issued and outstanding, (B) 189,205,047 shares are designated as Series B Preferred Stock, 52,801,406 of which are issued and outstanding, (C) 95,335,876 shares are designated as Series B Prime Preferred Stock, 57,201,526 of which are issued and outstanding, and (D) 8,695,652 shares are designated as Series BB Preferred Stock, none of which are issued and outstanding and all of which are reserved for issuance upon the exercise of all the Warrants issued pursuant to and under this Agreement. All issued and outstanding shares of Preferred Stock have been duly and validly issued and are fully paid and nonassessable.

(ii) 252,716,057 shares of Common Stock, of which 6,839,171 shares have been duly and validly issued and are fully paid and nonassessable.

(iii) The Company has reserved: (A) 189,205,047 shares of its Series B Preferred Stock and 95,335,876 shares of it Series B Prime Preferred Stock for issuance pursuant to the terms of the Preferred Stock Purchase Agreement of the Company dated as of January 27, 2004; (B) 8,695,652 shares of its Series BB Preferred Stock for issuance upon the exercise of the Warrants; (C) 197,900,699 shares of Common Stock upon conversion of its Preferred Stock; (D) 23,517,858 shares of Common Stock for issuance under the Company's 2003 Equity Incentive Plan, of which 395,000 shares have been issued upon the exercise of options. Options to purchase 14,760,445 shares of Common Stock have been granted under the Company's 2003 Equity Incentive Plan. Except for the Warrants (as defined herein), as provided for under that certain Second Amended and Restated Investor Rights Agreement dated as of June 24, 2005 by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of the Warrants and certain holders of Common Stock and as otherwise set forth above, there are no outstanding rights of first refusal, preemptive rights, phantom stock, stock appreciation rights or other rights, warrants, options, conversion privileges, subscriptions, or other rights or agreements, either directly or indirectly, to purchase or otherwise acquire or issue any equity securities of the Company.

(b) The Company has no direct Subsidiaries other than the Borrower. **Schedule 5.4** includes a complete and correct list of the authorized and issued and outstanding capital stock of the Borrower both before and after giving effect to the Merger. All of the outstanding shares of capital stock of the Borrower are validly issued and outstanding and fully paid and nonassessable and all such shares are owned by the Company free and clear of all Liens other than Permitted Liens. There are no outstanding commitments or other obligations of the Borrower to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of the Borrower.

(c) After giving effect to the Merger, the Borrower has no Subsidiaries other than Orphan Medical Europe Limited, a company formed under the laws of England and

Wales ("*Orphan Sub*"). **Schedule 5.4** includes a complete and correct list of the authorized and issued and outstanding share capital of Orphan Sub. All of the outstanding share capital of Orphan Sub has been validly issued and outstanding and fully paid and nonassessable and all such share capital is owned by the Borrower free and clear of all Liens other than Permitted Liens. There are no outstanding commitments or other obligations of Orphan Sub to issue, and no options, warrants or other rights of any Person to acquire, any share capital or other equity interests of Orphan Sub. Orphan Sub does not have and never had any assets, employees or ongoing business operations.

Section 5.5 Financial Statements. The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on **Schedule 5.5**. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such financial statements and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

Section 5.6 Compliance with Laws, Other Instruments, Etc. The execution, delivery and performance by each Credit Party of the Related Documents to which each such Credit Party is a party, including the Notes, in the case of the Borrower, and the Warrants, in the case of the Company, will not violate, contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien (other than Liens permitted by **Section 10.3**) in respect of any property of such Credit Party under, (a) any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other agreement or instrument to which any Credit Party is bound or by which any Credit Party or any of their respective properties may be bound or affected, (b) any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to any Credit Party or (c) any statute or other rule or regulation of any Governmental Authority applicable to any Credit Party, in each case, except to the extent as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.7 Governmental Authorizations, Etc. Except as disclosed in **Schedule 5.7**, no consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by each Credit Party of the Related Documents to which each such Credit Party is a party, including the Notes, in the case of the Borrower, and the Warrants, in the case of the Company.

Section 5.8 Litigation; Observance of Agreements, Statutes and Orders.

(a) Except as disclosed in **Schedule 5.8**, there are no actions, suits or proceedings pending or, to the knowledge of the Company or the Borrower, threatened against or affecting any Credit Party or the property of any Credit Party in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) No Credit Party is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.9 Taxes. Each Credit Party has filed all tax returns that are required to have been filed by it in any jurisdiction, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon it or its properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which is not individually or in the aggregate Material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which such Credit Party has established adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and the Company and their Subsidiaries in respect of Federal, state or other taxes for all fiscal periods are adequate. Except as disclosed in **Schedule 5.9**, the Federal income tax liabilities of the Borrower, the Company and their respective Subsidiaries have been determined and paid for all fiscal years up to and including the fiscal year ended December 31, 2004.

Section 5.10 Title to Property; Leases. The Credit Parties have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheets referred to in **Section 5.5** or purported to have been acquired by the Credit Parties after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases entered into by a Credit Party that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

Section 5.11 Intellectual Property, Licenses, Permits, Etc.

(a) **Schedule 5.11** sets forth all of the Credit Parties' patents and patent applications, in-bound patent licenses, trademarks and trademark applications, in-bound trademark licenses, copyrights and copyright applications and in-bound copyright licenses, including the description thereof, the name of the registered owner, the jurisdiction of such registration and the registration number (collectively, the "*IP Rights*").

(b) Except as disclosed in **Schedule 5.11**, to the Knowledge of the Company:

(i) the Company and its Subsidiaries own or possess the IP Rights, without known conflict with the rights of others;

(ii) no Product of the Company or its Subsidiaries infringes in any Material respect any license, patent, copyright, service mark, trademark, trade name or other intellectual property right owned by any other Person; and

(iii) there is no Material violation by any Person of any right of the Company or any of its Subsidiaries with respect to any IP Rights.

Section 5.12 Compliance with ERISA.

(a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not reasonably be expected to be, individually or in the aggregate, Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in Section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in Section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under Section 4201 or 4204 of ERISA in respect of Multiemployer Plans that remain unsatisfied or that, individually or in the aggregate, would reasonably be expected to be Material.

(d) The expected post-retirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by Section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) Assuming that the representations and warranties of the Purchasers set forth in **Section 6.1(e)** are true and correct, the execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c)(l)(A)-(D) of the Code.

Section 5.13 Private Offering by the Company. Assuming that the representations and warranties of the Purchasers set forth in **Section 6** are true and correct, the offering, issuance and

delivery of the Notes, the Warrants and the shares of capital stock issuable upon the exercise of the Warrants (collectively, the "*Securities*") are exempt from the registration requirements of the Securities Act and the rules and regulations thereunder, and, except for the federal and state filings set forth in **Schedule 5.7**, it is not necessary to make or obtain any filings, registrations, qualifications, notifications or consents or approvals of or with any Governmental Authority in connection therewith.

Section 5.14 Use of Proceeds. The Borrower will apply the proceeds of the sale of the Notes to consummate the Merger and pay for transactions costs incurred in connection therewith. No Credit Party is engaged principally or as one of its activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect. Other than in connection with the Merger, none of the proceeds of the Notes will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for any other purpose which might cause any of the Notes under this Agreement to be considered a "Purpose credit" within the meaning of Regulations T, U, or X of the Board of Governors of the Federal Reserve Board.

Section 5.15 Existing Indebtedness; Future Liens.

(a) Except as described therein, **Schedule 5.15** sets forth a complete and correct list of all outstanding Indebtedness of each Credit Party as of the date of Closing. No Credit Party is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of such Credit Party and no event or condition exists with respect to any Indebtedness of such Credit Party that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in **Schedule 5.15**, no Credit Party has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien other than Permitted Liens.

Section 5.16 Foreign Assets Control Regulations, Etc. Neither the sale of the Notes by the Borrower hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither the Company nor any of its Subsidiaries (a) is or will become a blocked person described in Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49049 (2001)) or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such person.

Section 5.17 Status under Certain Statutes. No Credit Party is an "investment company" registered or required to be registered subject to regulation under the Investment Company Act of 1940, as amended, or is subject to regulation under the Public Utility Holding Company Act of 1935, as amended, or the Federal Power Act, as amended.

Section 5.18 Environmental Matters. Except as otherwise disclosed in **Schedule 5.18**:

(a) the Company has no Knowledge of any claim, has received no notice of any claim, and no proceeding has been instituted raising any claim against any Credit Party or any real properties now or formerly owned, leased or operated thereby, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect;

(b) the Company has no knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any Credit Party or to other assets or their use, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect;

(c) no Credit Party has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or has disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that would reasonably be expected to result in a Material Adverse Effect; and

(d) all buildings on all real properties now owned, leased or operated by any Credit Party are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

Section 5.19 Names. **Schedule 5.19** sets forth all names, trade names, fictitious names and business names under which each Credit Party currently conducts its business or has at any time during the past five years conducted business.

Section 5.20 Locations; FEIN. **Schedule 5.20** sets forth the state of organization of each Credit Party, location of each Credit Party's chief executive office and principal place of business, the location of all other offices of the Credit Parties, and all Collateral locations other than (a) locations of Inventory which has been delivered to clinical research organizations in connection with such Credit Party's clinical research or to physicians as a sample, in each case, in the ordinary course of such Credit Party's business, or (b) locations of Equipment being used by employees and consultants of any Credit Party in the ordinary course of business. Each Credit Party's federal employer identification number and entity identification number in its respective state of incorporation is set forth on **Schedule 5.20**.

Section 5.21 Solvency. At the Closing, both before and after giving effect to the Merger and the transactions contemplated by this Agreement and the other Related Documents, and, as of the date of this Agreement, each Credit Party: (a) owns assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including contingent liabilities) and (ii) greater than the amount that will be required to pay its probable liabilities as they mature; (b) has capital that is not unreasonably small in relation to its businesses as presently conducted or any contemplated or undertaken transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

Section 5.22 Status of Security Interest. This Agreement creates in favor of the Collateral Agent a legal, valid and enforceable security interest in the Collateral. When financing statements setting forth the Collateral and naming the Collateral Agent as the secured party and the Borrower and the Company, as the debtor, respectively, have been filed with the Secretary of State of the State of Delaware against each of the Borrower and the Company, the Collateral Agent will have a fully perfected first priority Lien on, and security interest in, the Collateral in which a security interest may be perfected by such filing, subject only to Permitted Liens.

SECTION 6. REPRESENTATIONS OF THE PURCHASERS.

Section 6.1 Representations to the Borrower and the Company. Each Purchaser represents and warrants to the Borrower and the Company, severally and not jointly, with respect to its purchase of the Notes and Warrants as follows:

(a) Purchaser is purchasing the Note and Warrant for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act. Purchaser is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act, and, in any case, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of investing in the Securities. Purchaser has not been formed for the purpose of investing in the Securities.

(b) Purchaser understands that the Note and Warrant that Purchaser is purchasing have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available and the Securities may be imprinted with a legend indicating such restrictions on the transferability thereof.

(d) Purchaser understands that the Securities are presently characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company and the Borrower in a transaction not involving a public offering and that under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, Purchaser represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(e) Purchaser represents that at least one of the following statements is an accurate representation as to each source of funds (a "*Source*") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(i) if such Purchaser is an insurance company, the Source does not include assets allocated to any separate account maintained by you in which any employee benefit plan (or its related trust) has any interest, other than a separate account that is maintained solely in connection with your fixed contractual obligations under which the amounts payable, or credited, to such plan and to any participant or beneficiary of such plan (including any annuitant) are not affected in any manner by the investment performance of the separate account; or

(ii) the Source is either (i) an insurance company pooled separate account, within the meaning of Prohibited Transaction Exemption ("*PTE*") 90-1 (issued January 29, 1990), or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 (issued July 12, 1991) and, except as Purchaser has disclosed to the Company in writing pursuant to this paragraph (b), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(iii) the Source constitutes assets of an "investment fund" (within the meaning of Part V of the QPAM Exemption) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (x) the identity of such QPAM and (y) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this paragraph (iii); or

(iv) the Source is a governmental plan; or

(v) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this paragraph (v); or

(vi) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this **Section 6.1**, the terms "*employee benefit plan*," "*governmental plan*," "*party in interest*" and "*separate account*" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

Section 6.2 Exculpation of the Purchasers. Each Purchaser acknowledges that it is not relying upon any Person (including the Collateral Agent or any other Purchaser), other than the Company and its officers (acting in their respective capacities as representatives of the Company), in deciding to invest and in making its investment in the purchase of the Notes and Warrants. Each Purchaser agrees that none of the Collateral Agent, the other Purchaser or any of their respective controlling Persons, officers, directors, partners, agents or employees shall be liable to such Purchaser for any losses incurred by such Purchaser in connection with its purchase of the Notes and Warrants.

SECTION 7. INFORMATION AS TO THE COMPANY.

Section 7.1 Financial and Business Information. The Borrower and the Company, jointly and severally, agree to deliver to each holder of Notes:

(a) *Quarterly Statements*. Within 45 days after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), copies of:

(i) a consolidated and consolidating balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(ii) consolidated and consolidating statements of income, changes in stockholders' equity and cash flows of the Company and its Subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments. Filing of the Company's quarterly reports on Form 10-Q under and in satisfaction of the Exchange Act shall, for purposes of this **Section 7.1(a)** constitute delivery.

(b) *Annual Statements.* Within 90 days after the end of each fiscal year of the Company, copies of,

(i) a consolidated and consolidating balance sheet of the Company and its Subsidiaries, as at the end of such year, and

(ii) consolidated and consolidating statements of income, changes in stockholders' equity and cash flows of the Company and its Subsidiaries, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances. The reports in this **clause (b)** shall be accompanied by any management letter prepared by the above-referenced accountants. Filing of the Company's annual reports on Form 10-K under and in satisfaction of the Exchange Act shall, for purposes of this **Section 7.1(b)**, constitute delivery.

(c) *Notice of Default or Event of Default*. Promptly, and in any event within five Business Days after a Responsible Officer becomes aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in **Section 11(f)**, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(d) *ERISA Matters*. Promptly, and in any event within five Business Days after a Responsible Officer becomes aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan (other than any Multiemployer Plan), any reportable event, as defined in Section 4043(b) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan (other than any Multiemployer Plan), or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens thereof then existing, could reasonably be expected to have a Material Adverse Effect;

(e) *Notices of Certain Adverse Events*. Promptly, and in any event within five Business Days after a Responsible Officer becomes aware of any of the following, a written notice regarding: (i) the occurrence of any event or circumstance which has had or will likely have a Material Adverse Effect, (ii) the occurrence of any event or circumstance which is a matured and un-waived material default under any third party agreement entered into by the Company or any of its Subsidiaries that is Material, (iii) the institution of any action, suit, proceeding, governmental investigation or arbitration which exposes the Company or any of its Subsidiaries to a liability that is Material, and (iv) the receipt of any communications regarding potential or actual material defaults (whether waived or not) on any Indebtedness that is Material; and

(f) *Requested Information*. With reasonable promptness, such other materials, data and information relating to the business, operations, affairs, financial condition, properties or prospects of the Company or any of its Subsidiaries as from time to time may be reasonably requested by any such holder of Notes in order to enable such holder to monitor the Borrower's and the Company's progress in key areas; *provided, however,* that neither the Borrower nor the Company shall be obligated to provide such information as is comprised of privileged attorney client communications or that is particularly sensitive confidential business material. In furtherance of the foregoing, the Company hereby agrees to furnish the holders of Notes, promptly upon completion of the top line analysis thereof, the results of the Phase III data of the Company's Product known as JZP3, in reasonable detail.

(g) *Operating Plan and Budget*. As soon as available, and in any event within 30 days after the end of each fiscal year of the Company, a copy of the Company's consolidated and consolidating budget for the such fiscal year, such budget to show the Company's projected consolidated and consolidating revenues, expenses, and balance sheet on a quarterly basis, such budget to be in the form to be provided to the Company's preferred stockholders.

Section 7.2 Officer's Certificate. Each set of financial statements delivered to a holder of Notes pursuant to **Section 7.1(a)** or **Section 7.1(b)** hereof shall be accompanied by a certificate of a Senior Financial Officer setting forth a statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence of a Default or an Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

Section 7.3 Inspection. The Company shall, and shall cause each Subsidiary to, permit the representatives of each holder of Notes to visit and inspect any of the properties, corporate books and financial records of the Company and each Subsidiary, to examine and make copies (in reasonable quantities) of the books of accounts and other financial records of the Company and each Subsidiary thereof, and, with the consent of the Company if no Default or Event of Default exists (such consent to not be unreasonably withheld), to discuss the affairs,

finances and accounts of the Company and each Subsidiary with, and to be advised as to the same by the Company's employees and independent public accountants (and by this provision the Company authorizes such accountants to discuss with the Purchasers the finances and affairs of the Company and its Subsidiaries so long as consent has been given thereby when required by this **Section 7.3**), in each case, at such reasonable times and reasonable intervals during normal business hours upon reasonable prior notice.

Section 7.4 Executive Management Access. The Company shall cause the Executive Chairman, the Chief Executive Officer and/or the Chief Financial Officer of the Company to meet with the Purchasers promptly upon the Purchasers' reasonable request therefor no less frequently than once per quarter.

SECTION 8. PREPAYMENT OF THE NOTES.

Section 8.1 Required Prepayments. In addition to paying the remaining outstanding principal amount and the interest due on the Notes on the maturity date thereof or upon acceleration of the Notes pursuant to **Section 12**, all as guaranteed by the Company Guaranty, if a Mandatory Prepayment Event occurs, the Borrower and the Company each agree as follows:

(a) Promptly upon the consummation of such Mandatory Prepayment Event, the Borrower shall give the holders of the Notes written notice of such Mandatory Prepayment Event with a description in reasonable detail of such Mandatory Prepayment Event including, the calculation of the Net Proceeds received in connection therewith and, for each holder of a Note, the amount of such holder's Pro Rata Portion of such Net Proceeds.

(b) The Net Proceeds received by the Company or any of its Subsidiaries in connection with such Mandatory Prepayment Event shall be placed upon receipt thereof directly into a deposit or investment account pledged to the Collateral Agent for the benefit of the holders of the Notes as collateral security for the prompt and full payment of the Notes and shall be applied to the outstanding principal balance of the Notes or released to the Company or its Subsidiaries as follows:

(i) Each holder of a Note shall have the option, exercised by written notice to the Borrower, prior the end of business on the date that is 21 days after receiving notice of the Mandatory Prepayment Event or 21 days after the Phase III data on the Company's Product known as JZP3 is known by the Purchasers, whichever is later (the "*End Release Date*"), to require that all or any portion of such holder's Pro Rata Portion of the Net Proceeds, in such holder's discretion, be applied as a prepayment in reduction of the outstanding principal balance of the then outstanding Notes then held by such Holder.

(ii) If and to the extent that any holder of a Note declines to require a mandatory prepayment or otherwise waives the provisions of this **Section 8.1** in connection with any Mandatory Prepayment Event, in either case in a writing signed by such holder, or, if such holder fails to give notice prior to the End Release Date requiring a full or partial prepayment of such holder's Note or Notes

pursuant to clause (i) above, then an amount equal to such holder's Pro Rata Portion of the Net Proceeds shall be released from the collateral account and freely available to the Company and its Subsidiaries for all legal purposes permitted by this Agreement.

Section 8.2 Optional Prepayments with Make-Whole Amount. The Borrower may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of the Notes, in a minimum amount not less than $5,000,000 and in increments of at least $1,000,000 in excess of such minimum, in the case of a partial prepayment, at 100% of the principal amount so prepaid, together with interest accrued thereon to the date of such prepayment, plus the Make-Whole Amount, if any, determined for the prepayment date with respect to such principal amount. The Borrower will give each holder of Notes written notice of each optional prepayment under this **Section 8.2** not less than **5** days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid, and the interest and Make-Whole Amount, if any, to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of Senior Financial Officer specifying the computation of the Make-Whole Amount due in connection with such prepayment, setting forth the details of such computation. In the case of each partial prepayment of the Notes made pursuant to this **Section 8.2**, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

Section 8.3 Maturity, Surrender, Etc. In the case of each prepayment of Notes pursuant to this **Section 8**, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Borrower shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

SECTION 9. AFFIRMATIVE COVENANTS.

Each of the Borrower and the Company covenants, jointly and severally, that so long as any of the Notes are outstanding:

Section 9.1 Compliance with Law. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and to obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.2 Insurance. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated. The Collateral Agent shall be named as "lender's loss payee" on all insurance policies relating to any Collateral and as "additional insured" under all liability policies (except Directors' and Officers' Insurance, automobile insurance, workers' compensation, fiduciary liability and employment practices), in each case pursuant to appropriate endorsements in form and substance reasonably satisfactory to the Collateral Agent.

Section 9.3 Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times; provided that this **Section** shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.4 Payment of Taxes and Claims. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien (other than Liens permitted by **Section 10.3**) on properties or assets of the Company or any Subsidiary; *provided* that neither the Company nor any Subsidiary need pay any such tax or assessment or charge or claim if (a) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (b) the nonpayment of all such taxes, assessments, charges and claims in the aggregate could not reasonably be expected to have a Material Adverse Effect.

Section 9.5 Corporate Existence, Etc. Subject to **Section 10.2**, the Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, at all times preserve and keep in full force and effect its corporate existence and the corporate existence of each of such Subsidiary and all rights and franchises of the Borrower, the Company and such Subsidiaries; *provided*, that this **Section 9.5** shall neither apply to nor operate to prevent the Borrower or the Company from failing to preserve the corporate existence, right or

franchise of any Subsidiary if such failure would not impair the Collateral Agent's rights in any assets of such Subsidiary pledged as collateral for the payment of the Obligations and, in the good faith judgment of the Company, such failure would not be reasonably expected to have a Material Adverse Effect.

Section 9.6 Minimum Cash Balance. The Borrower will at all times maintain a minimum cash balance equal to 15% of the then outstanding principal amount on the Notes in a deposit or other similar demand investment account that is pledged to the Collateral Agent for the benefit of the Purchasers as collateral security for the prompt and full payment of the Notes and which such account is subject to a control account agreement, in form and substance reasonably satisfactory to the Collateral Agent, between the applicable financial intermediary where such account is held and the Collateral Agent.

Section 9.7 Subsidiary Documentation. In connection with and within five Business Days of the creation, acquisition and/or capitalization by the Company or any Subsidiary of the Company of a new Subsidiary (a "*New Subsidiary*") on or after the date hereof, the Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, satisfy the following requirements:

(a) In the case of a New Subsidiary which is a Domestic Subsidiary, deliver to the Collateral Agent, the following documentation, instruments and agreements, in each case, evidencing a first priority perfected security interest and in form and substance reasonably satisfactory to the Collateral Agent:

(i) a pledge agreement (substantially in the form of the Pledge Agreement) executed by the Company or the Subsidiary which is the parent of such New Subsidiary together with the related stock certificates, if any, stock powers and similar documentation reasonably required by the Collateral Agent to attach and perfect a security interest in 100% of the capital stock or similar ownership interests of the New Subsidiary as collateral security for the prompt and full payment and performance of the Obligations;

(ii) a Guaranty executed by the New Subsidiary guaranteeing the prompt and full payment of the Obligations;

(iii) a security agreement, mortgage, deed of trust and/or intellectual property security agreement executed by the New Subsidiary as reasonably required by the Collateral Agent in order to properly attach and perfect (as applicable) a security interest in all of the property of the New Subsidiary (other than property constituting ownership interests of a Foreign Subsidiary, which shall be subject to the provisions of **Section 9.7(b)** below) as collateral security for the prompt and full payment of the Obligations; and

(iv) authorization from the new Subsidiary to file any necessary UCC financing statements and other similar documents or instruments required to perfect any security interests granted pursuant to the clause (iii) above.

(b) In the case of a New Subsidiary which is a Foreign Subsidiary, deliver to the Collateral Agent a pledge agreement or similar instrument or agreement executed by the parent of such New Subsidiary pursuant to which 65% of the outstanding ownership interests of such New Subsidiary is pledged as collateral security for the prompt and full payment of the Obligations.

Section 9.8 Perfection and Maintenance of Security Interests. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, perform any and all steps reasonably requested by the Collateral Agent to perfect, maintain and protect the Collateral Agent's security interests in and against the Collateral granted or purported to be granted under this Agreement or any other Related Agreement, including, without limitation, (a) authorizing the Collateral Agent to file financing or continuation statements, or amendments thereof, (b) delivering to the Collateral Agent all certificates, notes and other instruments representing or evidencing Collateral, which certificates, notes and other instruments have been duly endorsed or are accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Collateral Agent, (c) at the reasonable direction of the Collateral Agent, delivering to the Collateral Agent warehouse receipts covering that portion of the Collateral, if any, located in warehouses and for which warehouse receipts are issued, (d) after the occurrence and during the continuance of an Event of Default, and only to the extent permitted by law, transferring Inventory and Equipment to warehouses designated by the Collateral Agent or taking such other steps as are deemed necessary by the Collateral Agent to maintain its control of the Inventory and Equipment, and (e) executing and delivering all further instruments and documents, and taking all further action as the Collateral Agent may reasonably request.

Section 9.9 Collateral Locations. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, keep the Collateral (other than (a) Inventory delivered, in the ordinary course of any Credit Party's business, to clinical research organizations used in clinical research or to physicians as a sample and (b) Equipment being used by employees and consultants of any Credit Party in the ordinary course of its business) at the locations specified on **Schedule 5.20**; *provided*, *however*, that the Borrower or the Company may amend **Schedule 5.20** so long as such amendment occurs by written notice to the Collateral Agent not less than thirty (30) days prior to the date on which such Collateral is moved. With respect to any new location (which in any event shall be within the continental United States), Borrower and the Company will execute such documents and take such actions as the Collateral Agent deems reasonably requests to perfect and protect the security interests of the Collateral Agent in the Collateral prior to the transfer or removal of any Collateral to such new location.

SECTION 10. NEGATIVE COVENANTS.

Each of the Borrower and the Company, jointly and severally, covenants that so long as any of the Notes are outstanding:

Section 10.1 Limitations on Indebtedness.

(a) The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, create, issue, assume, guarantee or otherwise incur or in any manner be or become liable in respect of any Indebtedness, except:

(i) Indebtedness evidenced by the Notes;

(ii) unsecured Indebtedness incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) so long as no principal of such Indebtedness is scheduled to mature prior to the stated maturity of the Notes;

(iii) (a) secured or unsecured purchase money Indebtedness (including Capital Leases) (such Indebtedness being referred to herein as "*Permitted Purchase Money Indebtedness*") incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) and (b) secured Indebtedness (such Indebtedness being referred to herein as "*Permitted Receivables/Inventory Indebtedness*") incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) secured by Accounts and Inventory, if all such Permitted Purchase Money Indebtedness and Permitted Receivables/Inventory Indebtedness does not exceed, in the aggregate at any time outstanding, the greater of (1) $5,000,000 or (2) 8% of Consolidated Net Tangible Assets as determined at such time using the consolidated balance sheet of the Company and its Subsidiaries for the most recently completed fiscal quarter of the Company;

(iv) secured Indebtedness (hereinafter referred to as the "*Permitted Other Secured Indebtedness*") created, issued, assumed, guaranteed or otherwise incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) so long as no principal of such Indebtedness is scheduled to mature prior to the stated maturity of the Notes; *provided* that at the time of creation, issuance, assumption, guarantee or incurrence thereof and after giving effect thereto and to the application of the proceeds thereof, the ratio of (i) Consolidated Secured Indebtedness at such time to (ii) Consolidated EBITDA as measured for the then trailing six most recently completed fiscal quarters of the Company on an annualized basis or the four most recently completed fiscal quarters of the Company if the date of determination is after the third anniversary of the Closing, shall not be in excess of 3.0 to 1.0;

(v) Indebtedness (hereinafter referred to as the "*Permitted Acquisition Indebtedness*") created, issued, assumed, guaranteed or otherwise incurred by the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) used to finance (or assumed in connection with) the acquisition of a pharmaceutical or biotechnology product (including by way of the acquisition of stock or other similar ownership interests of the Person owning the target product); *provided* that at the time of creation, issuance, assumption,

guarantee or incurrence thereof and after giving effect thereto and to the application of the proceeds thereof, the aggregate outstanding principal amount of such Indebtedness permitted by this clause (v) shall not exceed three times the lower of:

(1) the annualized EBITDA of the Person or product being acquired as measured for the then most recent 12 months ended; or

(2) the lowest projected annualized EBITDA for the Person or product being acquired, as the case may be, for any of the three years following the acquisition as determined by the Company in good faith on a pro forma basis and presented to the Company's board of directors in connection with the approval of such acquisition; and

(vi) Indebtedness represented by currency swaps or letters of credit entered into or issued, as the case may be, in the ordinary course of business of a Credit Party.

(b) The renewal, extension, increase or refunding of any Indebtedness originally permitted to be issued, incurred or outstanding pursuant to **Section 10.1(a)** shall constitute the issuance of additional Indebtedness which is, in turn, subject to the limitations of the applicable provisions of this **Section 10.1**.

(c) Any Person that becomes a Subsidiary after the date hereof shall for all purposes of this **Section 10.1** be deemed to have created, assumed or incurred at the time it becomes a Subsidiary all Indebtedness of such Person existing immediately after it becomes a Subsidiary which Indebtedness, in turn, shall be subject to the limitations of this **Section 10.1** including, for the avoidance of doubt, any exceptions set forth herein.

(d) Each Credit Party, the Collateral Agent and each Purchaser acknowledges and agrees that, notwithstanding the incurrence or assumption of any of the Indebtedness permitted to be incurred or assumed pursuant to **Section 10.1(a)**, the Liens granted to the Collateral Agent for the benefit of the holders of Notes as collateral security for the payment of the Obligations (including, without limitation, the Liens on the Collateral provided for in **Section 3** hereof) shall remain in place as valid and enforceable Liens; *provided*, *however*, that the Purchasers and the Collateral Agent hereby agree that, in the case of the incurrence or assumption of any Permitted Purchase Money Indebtedness, any Permitted Receivables/Inventory Indebtedness or any Permitted Acquisition Indebtedness, if requested by the Company, the Collateral Agent shall agree, in a writing that is in form and substance reasonably acceptable thereto, with the applicable creditor or creditors holding such Permitted Purchase Money Indebtedness, such Permitted Receivables/Inventory Indebtedness or such Permitted Acquisition Indebtedness, as the case may be, to subordinate any Liens which the Collateral Agent has or holds on the assets being acquired or financed in favor of the Liens expressly permitted to be incurred under **Sections 10.3 (a)(i), 10.3(a)(ii)** and **10.3(c)**, respectively, in connection with such acquisition.

Section 10.2 Mergers, Consolidations and Dispositions. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, be a party to any merger or consolidation in which more than 50% of the voting power of the Company or such Subsidiary is disposed of, or sell, transfer, lease or otherwise dispose of any part of its property, including a disposition of property as part of a sale and leaseback transaction; *provided*, *however*, that this **Section** shall neither apply to nor operate to prevent the Company from being a party to any merger or consolidation so long as such merger or consolidation is not deemed to be a Change in Control, and shall not apply to or prevent the Borrower, the Company or any of its Subsidiaries from:

(a) selling Inventory in the ordinary course of its business;

(b) selling, transferring or otherwise disposing of worn-out, obsolete or surplus property or property no longer useful or necessary to the operation of the business of the Company or its Subsidiaries;

(c) transferring or licensing rights to property of the Company or any of its Subsidiaries as part of a co-marketing, co-promotion, out-bound licensing or similar partnering arrangement (which may include product specific financing by such co-marketer, co-promoter, licensor or partner so long as the Indebtedness represented thereby is otherwise permitted by **Section 10.1**) of any Product of the Company or any of its Subsidiaries (but, for the avoidance of doubt, not Products of the Borrower or any direct Subsidiary of the Borrower except in connection with the existing agreement the Borrower has with UCB Pharma concerning the sale of Xyrem® in Europe) so long as, at the time of such sale, transfer or disposition and after giving effect thereto, no Default or Event of Default shall exist (a "*Permitted Product Transfer*");

(d) selling, transferring or otherwise disposing of any Product of the Borrower other than Xyrem® so long as, at the time of such sale, transfer or disposition and after giving effect thereto, no Default or Event of Default shall exist (a "*Permitted Product Disposition*");

(e) selling, transferring or otherwise disposing of any property from the Company or any Subsidiary of the Company (other than the Borrower) to the Company or any Wholly-owned Subsidiary of the Company (other than the Borrower) that is a Domestic Subsidiary;

(f) selling, transferring or otherwise disposing of any property from the Company or any Subsidiary of the Company (other than the Borrower or a Subsidiary of the Borrower) to a Foreign Subsidiary of the Company as part of a Permitted Foreign Subsidiary Transfer; or

(g) engaging in a transaction whereby any Subsidiary of the Company (other than the Borrower or a direct Subsidiary of the Borrower) merges or consolidates with or into the Company or any Subsidiary that is a Domestic Subsidiary; *provided* that in any merger or consolidation involving the Company, the Company shall be the surviving or continuing corporation.

Section 10.3 Limitation on Liens. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, create or incur, or suffer to be incurred or to exist, any Lien (except Permitted Liens) on its or their property, whether now owned or hereafter acquired, or upon any income or profits therefrom; *provided, however,* that the foregoing shall neither restrict nor operate to prevent:

(a) Liens on property of the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) created solely for the purpose of securing (i) Permitted Purchase Money Indebtedness so long as (x) such Liens shall not extend to or cover property of the Company or such Subsidiary other than the property so acquired in respect of such Permitted Purchase Money Indebtedness, and (y) the principal amount of the Indebtedness secured by any such Liens shall at no time exceed the original purchase price of such fixed assets and (ii) Permitted Receivables/Inventory Indebtedness;

(b) Liens on property of the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) created solely for the purpose of securing Permitted Other Secured Indebtedness so long as such Liens do not have priority over the Liens granted in favor of the Collateral Agent for the benefit of the Purchasers under this Agreement or any other Related Documents;

(c) Liens on property of the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) created solely for the purpose of securing (or assumed in connection with) Permitted Acquisition Indebtedness, so long as such Liens shall not extend to or cover property of the Company or such Subsidiary other than the property being acquired in connection with such Permitted Acquisition Indebtedness; or

(d) Liens on property of the Company or any Subsidiary of the Company created solely for the purpose of consummating a Permitted Product Transfer permitted by **Section 10.2(b)**, so long as such Liens shall not extend to or cover property of the Company or such Subsidiary other than the property which is the subject of such Permitted Product Transfer.

Section 10.4 Restricted Payments. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, except as hereinafter provided: declare or pay any dividends (other than dividends payable solely in capital stock), either in cash or property, on any shares of its capital stock of any class; directly or indirectly, or through any Subsidiary or through any Affiliate of the Company, purchase, redeem or retire any shares of its capital stock of any class or any warrants, rights or options to purchase or acquire any shares of its capital stock (other than in connection with the repurchase of common stock by the Company from current or former employees, directors or consultants of the Company upon the termination of their status as such); voluntarily prepay any unsecured Indebtedness permitted pursuant to **Section 10.1(a)(ii)** or Permitted Other Secured Indebtedness; or make any other payment or distribution, either directly or indirectly or through any Subsidiary, in respect of its capital stock; *provided*, *however*, that the foregoing shall neither apply to nor operate to prevent any Subsidiary of the Borrower or the Company from making a dividend or similar distribution to the Borrower, the Company or any Domestic Subsidiary thereof.

Section 10.5 Subsidiaries, Acquisitions and Investments. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, create or capitalize any Subsidiary after the date hereof, enter into any transaction or series of related transactions in which it acquires all or any significant portion of the assets or capital stock (or other similar equity interests) of another Person other than in connection with the Merger or make any other Investments other than Permitted Investments; *provided*, *however*, that this **Section** shall neither apply to nor operate to prevent the Company or any of its Subsidiaries from:

(a) creating and capitalizing a Subsidiary that is a Domestic Subsidiary, acquiring all or a significant portion of the assets of any Person or acquiring all or a significant portion of the capital stock (or other similar equity interests) of another Person if (i) the Company and its Subsidiaries comply with the requirements set forth in **Section 9.7(a)** in respect of any New Subsidiary created, (ii) any such assets or stock directly acquired is subject to the continuing security interests set forth in **Section 3** subject to any Liens permitted by **Section 10.3**, and (iii) no Default or Event of Default otherwise exists as of the time of the creation or capitalization of any such New Subsidiary; or

(b) creating and capitalizing a Subsidiary that is a Foreign Subsidiary if the Company and its Subsidiaries comply with the requirements set forth in **Section 9.7(b)** in respect of any New Subsidiary created and no Default or Event of Default otherwise exists as of the time of the creation or capitalization of such New Subsidiary.

For purposes of this **Section 10.5**, at any time when a Person becomes a Subsidiary, all Investments of such Person at such time shall be deemed to have been made by such Person, as a Subsidiary, at such time, which Investments, in turn, shall be subject to the limitations of this **Section 10.5**, including, for the avoidance of doubt, any exceptions set forth herein.

Section 10.6 Transactions with Affiliates. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, enter into or be a party to any Material transaction or arrangement with any Affiliate other than the Company or any Domestic Subsidiary of the Company (including, without limitation, the purchase from, sale to or exchange of property with, or the rendering of any service by or for, any Affiliate), except upon fair and reasonable terms not materially less favorable to the Company or such Subsidiary than would obtain in a comparable arm’s-length transaction with a Person other than an Affiliate.

Section 10.7 Corporate Documents. Neither the Company nor the Borrower shall amend, supplement or otherwise modify its respective certificate of incorporation, bylaws or constituent agreements as in effect on the date hereof and after giving effect to the Merger in any manner that is materially adverse to the interests of the holders of the Notes or the Warrants.

SECTION 11. EVENTS OF DEFAULT.

An "*Event of Default*" shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Borrower defaults in the payment of any principal on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Borrower defaults in the payment of any interest or Make-Whole Amount, if any, on any Note for more than one Business Day after the same becomes due and payable; or

(c) any Credit Party defaults in the performance of or compliance with any term contained in **Sections 2, 7.1(a), (b)** and **(c), 7.2 or 10**; or

(d) any Credit Party defaults in the performance of or compliance with any term contained this Agreement (other than those referred to in paragraphs (a), (b) and (c) of this **Section 11**) or any other Related Document and such default is not remedied within 15 days after the earlier of (i) the Company giving timely written notice of such default to the holders of Notes pursuant to **Section 7.1(e)** or (ii) if the Company fails to give such timely notice, upon a Responsible Officer obtaining actual knowledge of such default; or

(e) any representation or warranty made in writing by or on behalf of any Credit Party or by any officer of a Credit Party in this Agreement, any other Related Documents or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect on the date as of which made or, in the case of any representation or warranty which is not by its terms already qualified by materiality, proves to have been materially false on the date as of which made; or

(f) (i) the Company or any of its Subsidiaries is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least $2,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least $2,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (1) the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least $2,000,000, or (2) one or more Persons have the right to require the Company or any Subsidiary so to purchase or repay such Indebtedness; or

(g) the Company or any Domestic Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Domestic Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Domestic Subsidiaries, or any such petition shall be filed against the Company or any of its Domestic Subsidiaries and such petition shall not be dismissed within 60 days; or

(i) a final judgment or judgments for the payment of money aggregating in excess of $2,000,000 are rendered against one or more of the Company and its Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(j) a Change in Control shall have occurred; or

(k) except as permitted under any Related Document, (i) any material provisions of this Agreement or any other Related Document shall for any reason cease to be valid, binding and enforceable against the Company or any of its Subsidiaries subject to such agreements for any reason or the Company or any of its Subsidiaries shall so assert, or (ii) due to any action or inaction of the Company or its Subsidiaries any Lien created by this Agreement or other Related Document on any asset or property having a value, individually or in the aggregate, greater than $100,000 shall at any time fail to constitute a valid and perfected first priority Lien subject to no prior or equal Lien on any portion of the Collateral purported to be the subject of such Lien; or

(l) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA

Section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of Section 400l(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed $500,000, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.

As used in **Section 11(j)**, the terms "employee benefit plan" and "employee welfare benefit plan" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

SECTION 12. REMEDIES ON DEFAULT, ETC.

Section 12.1 Acceleration.

(a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of **Section 11** (other than an Event of Default described in clause (i) of paragraph (g) or described in clause (vi) of paragraph (g) by virtue of the fact that such clause encompasses clause (i) of paragraph (g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any Event of Default other than those set forth in **Section 12.1(a)** has occurred and is continuing, the Minimum Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) At any time that the Notes become due and payable under this **Section 12.1**, whether automatically or by declaration, each Note will forthwith mature and the entire unpaid principal amount of such Note, plus (i) all accrued and unpaid interest thereon and (ii) in the event that the Notes have become due by reason of an Event of Default described in Sections 11(a), (b), (g), (h) or (j), the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. Each of the Company and the Borrower acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for), and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default described in Sections 11(a), (b), (g), (h) or (j), is intended to provide compensation for the deprivation of such right under such circumstances.

Section 12.2 Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under **Section 12.1**, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 12.3 Certain Remedies as to Collateral. If any Event of Default shall have occurred and be continuing, in addition to and not in limitation of any rights or remedies available to the holders of Notes at law or in equity, the Collateral Agent may (and shall, if so directed by the Minimum Holders) exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and may also (a) notify any or all obligors on the Accounts to make all payments directly to the Collateral Agent; (b) require the Borrower and the Company to, and the Borrower and the Company hereby agree that they will, at their expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent which is reasonably convenient to both parties; (c) without notice or demand or legal process, enter upon any premises of the Borrower and the Company and take possession of the Collateral; and (d) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, at such time or times, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Borrower and the Company agree that, to the extent notice of sale shall be required by law, at least ten (10) days notice to the Borrower and the Company of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. At any sale of the Collateral, if permitted by law, the Collateral Agent may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) for the purchase of the Collateral or any portion thereof for the account of the Collateral Agent and/or disclaim all warranties. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Borrower and the Company shall remain liable for any deficiency. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed thereof, and such sale may, without further notice, be made at the time and place to which it was so adjourned. To the extent permitted by law, the Borrower and the Company hereby specifically waive all rights of redemption, stay or appraisal which they have or may have under any law now existing or hereafter enacted. The Collateral Agent shall not be required to proceed against any Collateral but may proceed against the Borrower and the Company directly.

Section 12.4 Appointment of Attorney-in-Fact. Effective upon the occurrence and during the continuation of an Event of Default, the Borrower and the Company hereby constitute and appoint the Collateral Agent as their attorney-in-fact with full authority in the place and

stead of the Borrower and the Company and in their name, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including: (a) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (b) to adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any customer or obligor thereunder or allow any credit or discount thereon; (c) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above; (d) to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral; and (e) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral. The appointment of the Collateral Agent as the Borrower's and the Company's attorney and the Collateral Agent's rights and powers are coupled with an interest and are irrevocable until no Event of Default shall exist or payment in full and complete performance of all of the Obligations.

Section 12.5 Limitation on Duty of the Collateral Agent with Respect to Collateral. Beyond the safe custody thereof, the Collateral Agent shall have no duty with respect to any Collateral in its possession or control (or in the possession or control of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. The Collateral Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Collateral Agent in good faith.

Section 12.6 Application of Proceeds. Upon the occurrence and during the continuance of an Event of Default, (a) the Borrower and the Company irrevocably waive the right to direct the application of any and all payments at any time or times thereafter received by the Collateral Agent from or on behalf of the Borrower and the Company, and the Borrower and the Company hereby irrevocably agree that the Collateral Agent shall have the continuing exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Event of Default against the Obligations in such manner as the Collateral Agent may deem advisable notwithstanding any previous entry by the Collateral Agent upon any books and records and (b) the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied: *first*, to all fees, costs and expenses incurred by the Collateral Agent or the Purchasers with respect to this Agreement, the other Related Documents or the Collateral; *second*, to accrued and unpaid interest and any Make-Whole Amount due on the Notes; and *third*, to the principal amounts of the Obligations outstanding.

Section 12.7 License of Intellectual Property. To the extent permitted under any relevant agreement entered into by the Company or the Borrower relating to its Intellectual Property, the Borrower and the Company hereby grant to the Collateral Agent for the benefit of

the holders of Notes, effective only upon the occurrence and during the continuance of any Event of Default hereunder, the non-exclusive limited right and license to use all Intellectual Property owned or licensed from a third-party by the Borrower or the Company together with any goodwill associated therewith (to the extent owned by the Borrower or the Company), solely to the extent necessary to enable the Collateral Agent to realize on the Collateral and any successor or assign of the Collateral Agent to enjoy the benefits of the Collateral. This limited right and license shall inure to the benefit of all successors, assigns and transferees of the Collateral Agent and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license is granted free of charge, without requirement that any monetary payment whatsoever be made to the Borrower and the Company by the Collateral Agent.

Section 12.8 No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of the Collateral Agent or any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon the Collateral Agent or any holder of a Note shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Borrower and the Company under **Section 15**, the Company will pay to the Collateral Agent and to the holder of each Note on demand such further amount as shall be sufficient to cover all reasonable costs and expenses of such holder incurred in any enforcement or collection under this **Section 12**, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

SECTION 13. REGISTRATION; TRANSFER; SUBSTITUTION OF NOTES.

Section 13.1 Registration of Notes. The Borrower shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Borrower shall not be affected by any notice or knowledge to the contrary.

Section 13.2 Transfer of Notes. Each Purchaser and any transferee (as permitted hereby) of a Purchaser may transfer, assign or otherwise negotiate any Note (or any portion thereof) held thereby to (a) any Affiliate of such Purchaser (or permitted transferee) or (b) if such transfer is acceptable to the Borrower and the Required Holders in their respective discretion, any other Person (each a "*Permitted Transfer*"). In order to effect a Permitted Transfer, the selling Purchaser (or any selling permitted transferee) shall surrender the applicable Note at the principal executive office of the Borrower, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or its attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof, where upon the Borrower shall execute and deliver, at the Borrower's expense, one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the

form of **Exhibit A**. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. Notes shall not be transferred in denominations of less than $5,000,000 (or, in the case of any transfer to an existing holder of a Note or an Affiliate thereof, $1,000,000); *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than $5,000,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representations set forth in **Section 6.6**.

Section 13.3 Replacement of Notes. Upon receipt by the Borrower of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it, or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Borrower at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

Section 13.4 Securitization. The Borrower hereby acknowledges that the holders of Notes and their permitted transferees may sell or securitize the Obligations (a "*Securitization*") owing thereto through the pledge of the Obligations as collateral security for loans to such holders or their permitted transferees or through the sale of the right to payment on the Obligations or the issuance of direct or indirect undivided interests in the Obligations. The Borrower shall cooperate with the holders of Notes to effect any proposed Securitization including, without limitation, by providing such information as may be reasonably requested by the holders in connection with the rating of the Obligations by a nationally recognized ratings agency in connection with the Securitization.

SECTION 14. PAYMENTS ON NOTES.

Section 14.1 Place of Payment. Subject to **Section 14.2**, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made to the account or accounts designated in writing by each holder of a Note.

Section 14.2 Home Office Payment. So long as a Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in **Section 14.1** or in such Note to the contrary, the Borrower will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address specified for such purpose below the Purchaser's name on **Schedule A**, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Borrower in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Borrower made concurrently with or reasonably promptly after payment or prepayment in full of any Note, any holder of the Note shall surrender

such Note for cancellation, reasonably promptly after any such request, to the Borrower at its principal executive office or at the place of payment most recently designated by the Borrower pursuant to **Section 14.1**. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Borrower in exchange for a new Note or Notes pursuant to **Section 13.2**. The Borrower will afford the benefits of this **Section 14.2** to any Purchaser that is the direct or indirect transferee of any Note purchased by such Purchaser under this Agreement and that has made the same agreement relating to such Note as such Purchaser has made in this **Section 14.2**.

SECTION 15. EXPENSES, ETC.

Section 15.1 Fees; Transaction Expenses. The Borrower and the Company will pay (a) all fees due upon Closing under the Commitment Letter; (b) all reasonable costs and expenses (including reasonable attorneys' fees of Pillsbury Winthrop Shaw Pittman LLP, special counsel to certain of the Purchasers) incurred by the Purchasers or holder of a Note in connection with the transactions contemplated hereby (subject to a maximum of $300,000 in the aggregate with respect to such transactions), (c) all reasonable costs and expenses (including reasonable attorneys' fees of a single law firm) incurred by the Collateral Agent or any holder of a Note in connection with any amendments, waivers or consents under or in respect of this Agreement, any other Related Document including the Notes (whether or not such amendment, waiver or consent becomes effective), (d) the reasonable costs and expenses incurred by the Collateral Agent or any holder of a Note in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes, or by reason of being a holder of any Note (including reasonable attorneys' fees for all such holders), and (e) the reasonable costs and expenses incurred by the Collateral Agent or any holder of a Note, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary. The Borrower will pay, and will save each Purchaser and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those retained by a Purchaser).

Section 15.2 Survival. The obligations of the Company and the Borrower under this **Section 15** will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the other Related Documents, the purchase or transfer by a holder of any Note or Warrant of such Note or Warrant or portion thereof or interest therein and the payment of any Note or the exercise of any Warrant, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of any holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Borrower or the Company pursuant to this Agreement shall be deemed representations and warranties of the Borrower or the Company under this Agreement. Subject to the preceding sentence, this Agreement and the other Related Documents embody the entire agreement and understanding between the Purchasers and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 17. AMENDMENT AND WAIVER.

Section 17.1 Requirements. This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company, the Borrower and the Required Holders, except that no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (a) change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (b) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (c) amend any of **Sections 8.1, 11(a), 12.1(a)** and **(b), 17.1** or **20** or the definitions of Required Holders or Minimum Holders set forth on **Schedule B**.

Section 17.2 Solicitation of Holders of Notes.

(a) *Solicitation*. The Borrower will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Borrower and the Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this **Section 17** to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) *Payment*. Neither the Borrower nor the Company will directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

Section 17.3 Binding Effect, Etc. Any amendment or waiver consented to as provided in this **Section 17** applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Borrower without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Borrower and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term “this Agreement” and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

Section 17.4 Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Subsidiaries shall be deemed not to be outstanding.

SECTION 18. NOTICES.

All notices and communications provided for hereunder shall be in writing and sent (a) by telefacsimile if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to a Purchaser or its nominee, to such Purchaser or its nominee at the address specified for such communications in **Schedule A**, or at such other address as any holder of a Note or it shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Borrower or the Company, to the Company at 3180 Porter Drive, Palo Alto, CA 94304, to the attention of Matthew K. Fust, Chief Financial Officer, with a copy to General Counsel, fax: (650) 496-3781, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this **Section 18** will be deemed given only when actually received.

SECTION 19. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by the Purchasers at the Closing (except the Notes and Warrants themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to the Purchasers, may be reproduced by the Purchasers by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and any holder of a Note may destroy any original document so reproduced. Each of the Company and the Borrower agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by a holder of any Note in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This **Section 19** shall not prohibit the Company and the Borrower or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

SECTION 20. CONFIDENTIAL INFORMATION.

For the purposes of this **Section 20**, "*Confidential Information*" means information delivered to a Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature; *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser without restriction prior to the time of such disclosure as evidenced by its written records, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on its behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to a holder of a Note under **Section 7.1** that are otherwise publicly available, except in the case of clause (a), (b), or (c), to the extent such information came from a source known to such Purchaser to be bound by an obligation of confidentiality to the Company as any of its Subsidiaries. Each Purchaser agrees to maintain the confidentiality of such Confidential Information for a period of at least 7 years in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered thereto, which procedures shall be at least as stringent as those used by such Purchaser with respect to its own important confidential information; *provided* that a Purchaser may deliver or disclose Confidential Information to (i) its directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by such Purchaser's Notes) who are bound to the terms of this **Section 20** or are otherwise bound by a duty of confidentiality at least as restrictive as the terms of this **Section 20**, (ii) such Purchaser's financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this **Section 20**, (iii) any other holder of any Note, (iv) any Person who is permitted to purchase a Note or Warrant from such Purchaser pursuant to the terms hereof or of the Notes or Warrants, as the case may be (but only if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this **Section 20**), (v) any Person from which a Purchaser offers to purchase any Note or Warrant of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this **Section 20**), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to a Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under any Notes and this Agreement. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this **Section 20** as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this **Section 20**.

SECTION 21. THE COLLATERAL AGENT.

Section 21.1 Appointment; Nature of Relationship. LB I Group Inc. is appointed by the Purchasers as the Collateral Agent hereunder and under each of the other Related Documents, and each of the Purchasers irrevocably authorizes the Collateral Agent (for so long as the Collateral Agent remains in such capacity under this Agreement) to act as the contractual representative of such Purchaser with only the rights and duties expressly set forth herein and in the other Related Documents. The Collateral Agent agrees to act as such contractual representative upon the express conditions contained in this **Section 21**. Notwithstanding the use of the defined term "Collateral Agent" it is expressly understood and agreed that the Collateral Agent shall not have any fiduciary responsibilities to any Purchaser by reason of this Agreement and that the Collateral Agent is merely acting as the representative of the Purchasers with only those duties as are expressly set forth in this Agreement and the other Related Documents. In its capacity as the Purchasers' contractual representative, the Collateral Agent (i) does not assume any fiduciary duties to any of the Purchasers, (ii) is a "representative" of the Purchasers within the meaning of Section 9-511 of the UCC and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Related Documents. Each of the Purchasers agrees to assert no claim against the Collateral Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Purchaser waives.

Section 21.2 Powers. The Collateral Agent shall have and may exercise such powers under the Related Documents as are specifically delegated to the Collateral Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Collateral Agent shall have no implied duties or fiduciary duties to the Purchasers, or any obligation to the Purchasers to take any action hereunder or under any of the other Related Documents except any action specifically provided by the Related Documents required to be taken by the Collateral Agent.

Section 21.3 General Immunity. Neither the Collateral Agent nor any of its directors, officers, agents or employees shall be liable to the Company, the Borrower, any Subsidiary or Affiliate of the Company or the Borrower, or any Purchaser for any action taken or omitted to be taken by it or them hereunder or under any other Related Documents or in connection herewith or therewith except to the extent such action or inaction is found in a final judgment by a court of competent jurisdiction to have arisen solely from (i) the gross negligence or willful misconduct of such Person or (ii) breach of contract by such Person with respect to the Related Documents.

Section 21.4 No Responsibility for Loans, Creditworthiness, Collateral, Recitals, Etc. Neither the Collateral Agent nor any of its directors, officers, Collateral Agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any statement, warranty or representation made in connection with any Related Document or any borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of any obligor under any Related Document; (iii) the satisfaction of any condition specified in **Section 4**, except receipt of items required to be delivered solely to the Collateral Agent; (iv) the existence or possible existence of any Default or Event of Default or (v) the validity, effectiveness or genuineness of any Related Document or any other instrument or writing furnished in connection therewith. The Collateral Agent shall not be responsible to any

Purchaser for any recitals, statements, representations or warranties herein or in any of the other Related Documents, for the perfection or priority of any of the Liens on any of the Collateral, or for the execution, effectiveness, genuineness, validity, legality, enforceability, collectibility, or sufficiency of this Agreement or any of the other Related Documents or the transactions contemplated thereby, or for the financial condition of any guarantor of any or all of the Obligations, the Company or any of its Subsidiaries.

Section 21.5 Action on Instructions of Purchasers. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Related Document in accordance with written instructions signed by the Required Purchasers (or any other percentage of Purchasers specified to be the applicable percentage in this Agreement or any other Related Document to act on specified matters), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Purchasers and on all holders of Notes. The Collateral Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Related Document unless it shall first be indemnified to its satisfaction by the Purchasers pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

Section 21.6 Employment of Collateral Agents and Counsel. The Collateral Agent may execute any of its duties as the Collateral Agent hereunder and under any other Related Document by or through employees, agents, and attorney-in-fact and shall not be answerable to the Purchasers, except as to money or securities received by it or its authorized agents. The Collateral Agent shall be entitled to advice of counsel concerning the contractual arrangement between the Collateral Agent and the Purchasers and all matters pertaining to the Collateral Agent's duties hereunder and under any other Related Document.

Section 21.7 Reliance on Documents; Counsel. The Collateral Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Collateral Agent, which counsel may be employees of the Collateral Agent.

Section 21.8 The Collateral Agent's Reimbursement and Indemnification. The Purchasers agree to reimburse and indemnify the Collateral Agent ratably in proportion to the principal amount of their respective Notes outstanding from time to time (i) for any amounts not reimbursed by the Borrower or the Company for which the Collateral Agent is entitled to reimbursement under the Related Documents, (ii) for any other expenses incurred by the Collateral Agent on behalf of the Purchasers, in connection with the preparation, execution, delivery, administration and enforcement of the Related Documents and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Collateral Agent in any way relating to or arising out of the Related Documents or any other document delivered in connection therewith or the transactions contemplated thereby, or the enforcement of any of the terms thereof or of any such other documents, *provided* that no Purchaser shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have arisen solely from the gross negligence or willful misconduct of the Collateral Agent.

Section 21.9 Rights as a Purchaser. With respect to its Notes, the Collateral Agent shall have the same rights and powers hereunder and under any other Related Document as any Purchaser and may exercise the same as though it were not the Collateral Agent, and the term "Purchaser" or "Purchasers" shall, unless the context otherwise indicates, include the Collateral Agent in its individual capacity.

Section 21.10 Successor Collateral Agent. The Collateral Agent may resign at any time by written notice to the Purchasers and the Credit Parties, and the Collateral Agent may be removed at any time with or without cause by written notice received by the Collateral Agent from the Required Purchasers. Upon any such resignation or removal, the Required Purchasers shall have the right to appoint, on behalf of the Credit Parties and the Purchasers, a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Required Purchasers and shall have accepted such appointment within thirty days after the retiring Collateral Agent's giving notice of resignation, then the retiring Collateral Agent may appoint, on behalf of the Credit Parties and the Purchasers, a successor Collateral Agent. Notwithstanding anything herein to the contrary, so long as no Default has occurred and is continuing, each such successor Collateral Agent shall be subject to approval by the Credit Parties, which approval shall not be unreasonably withheld. Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Related Documents. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this **Section 21** shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent hereunder and under the other Related Documents.

Section 21.11 Collateral Documents.

(a) Each Purchaser authorizes the Collateral Agent to enter into the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Purchaser agrees that no holder of the Notes (other than the Collateral Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Collateral Agent for the benefit of the holders of the Notes upon the terms of the Collateral Documents.

(b) In the event that any Collateral is hereafter pledged by any Person as collateral security for the Obligations, the Collateral Agent is hereby authorized to execute and deliver on behalf of the holders of the Notes any Related Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Collateral Agent on behalf of the holders of the Notes.

(c) The Purchasers hereby authorize the Collateral Agent, at its option and in its discretion, to (y) release any Lien granted to or held by the Collateral Agent upon any Collateral and/or (z) release any guarantor from its obligations under any Guaranty (i) upon the satisfaction of all of the Obligations at any time arising under or in respect of this Agreement or the Related Documents or the transactions contemplated hereby or

thereby; (ii) in connection with any transaction permitted by, but only in accordance with, the terms of the applicable Related Document; or (iii) in connection with any transaction approved, authorized or ratified in writing by the Required Purchasers, unless such release is required to be approved by all of the Purchasers hereunder. Upon request by the Collateral Agent at any time, the Purchasers will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this **Section 21.11.**

(d) Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Related Document, or consented to in writing by the Required Purchasers, the Collateral Agent shall (and is hereby irrevocably authorized by the Purchasers to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the holders of the Notes herein or pursuant hereto upon the Collateral that was sold or transferred; *provided*, *however*, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's reasonable opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Company or any of its Subsidiaries in respect of) all interests retained by the Company or any of its Subsidiaries, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral.

SECTION 22. MISCELLANEOUS.

Section 22.1 Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not. Neither the Borrower nor the Company shall be entitled to assign its rights hereunder without the written consent of each Purchaser and the Collateral Agent.

Section 22.2 Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

Section 22.3 Headings. Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 22.4 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 22.5 Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 22.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

Section 22.7 ***Governing Law*****. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State**.

Section 22.8 Waiver of Jury Trial. Each of the Borrower and the Company irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any other Related Document or the transactions contemplated thereby.

Section 22.9 Indemnity. The Borrower and the Company further agree, jointly and severally, to defend, protect, indemnify, and hold harmless the Collateral Agent and each and all of the holders of Notes, each of their respective Affiliates and their respective officers, directors, employees, attorneys and agents (collectively, the "*Indemnitees*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitees shall be designated a party thereto), imposed on, incurred by, or asserted against such Indemnitees in any manner relating to or arising out of this Agreement, any other Related Documents or the Merger Agreement (collectively, the "*Indemnified Matters*"); *provided*, *however*, that neither the Borrower nor the Company shall have any obligation to an Indemnitee hereunder with respect to Indemnified Matters caused by or resulting from (a) a dispute among the Purchasers or a dispute between any Purchaser and the Collateral Agent, or (b) the willful misconduct or gross negligence of such Indemnitee. If the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrower and the Company shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. This **Section 22.9** shall survive the full payment of the Obligations and the termination of this Agreement or any other Related Document.

* * * * *

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company and the Borrower.

Very truly yours,

TWIST MERGER SUB, INC.

By: /s/ Matthew K. Fust
Matthew K. Fust, Vice President and
Chief Financial Officer

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

LBI I GROUP INC.

By: /s/ Jeffrey A. Ferrell
Name: Jeffrey A. Ferrell
Title: Vice President

KKR TRS HOLDINGS, INC.

By: /s/ Barbara J.S. McKee
Name: Barbara J.S. McKee
Title: Authorized Signatory

DEEP COVE MEZZANINE, LLC

By: /s/ Reeve B. Waud
Name: Reeve B. Waud
Its: Manager

CARDINAL FUND I, L.P.

By: Cardinal Management I, L.P., General Partner

By: Cardinal MGP, L.L.C., General Partner

By: /s/ Ray Pinson
Name: Ray Pinson
Title: Vice President

FW JAZZ PHARMA INVESTORS, L.P.

By: Group VI, 31, L.L.C., General Partner

By: /s/ Ray Pinson
Name: Ray Pinson
Title: Vice President

OAK HILL CREDIT ALPHA FUND, LP

By: Oak Hill Credit Alpha GenPar, L.P., Its General Partner

By: Oak Hill Credit Alpha MGP, LLC, Its General Partner

By: /s/ Glenn R. August
Name: Glenn R. August
Title: Managing Member

LERNER ENTERPRISES, L.P.

By: Oak Hill Advisors, L.P. as advisor and attorney-in-fact to Lerner Enterprises, L.P. (OHP account)

By: /s/ Glenn R. August

Name: Glenn R. August
Title: President

GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated
Its Investment Manager

By: /s/ Michael M. Pastore

Name: Michael M. Pastore
Title: Vice President

SCHEDULE A
(to Senior Secured Note and Warrant Purchase Agreement)

INFORMATION RELATING TO PURCHASERS

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED	NUMBER OF SHARES OF BB PREFERRED WARRANT SHARES
LB I Group Inc. c/o Lehman Brothers 399 Park Avenue, 9th Floor New York, NY 10022 Attn: Jeffrey A. Ferrell	$30,000,000	3,260,870
KKR TRS Holdings, Inc. c/o KKR Financial Corp. 4 Embarcadero Center, Suite 2050 San Francisco, CA 94111 Attn: Barbara J.S. McKee	$25,000,000	2,717,391

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED	NUMBER OF SHARES OF BB PREFERRED WARRANT SHARES
Deep Cove Mezzanine, LLC 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045 Attn: Mark Flower	$ 5,000,000	543,478
Cardinal Fund I, L.P. 201 Main Street, Suite 2415 Fort Worth, TX 76102 Attn: Ray Pinson	$ 800,000	86,957
FW Jazz Pharma Investors, L.P. 201 Main Street, Suite 3100 Fort Worth, TX 76102 Attn: John H. Fant	$ 400,000	43,478

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED	NUMBER OF SHARES OF BB PREFERRED WARRANT SHARES
Oak Hill Credit Alpha Fund, LP c/o Oak Hill Advisors, LP 65 East 55th Street - 32nd Floor New York, NY 10022 Attn: Jennifer Cohen/Shilpa Wani	$ 7,000,000	760,870
Lerner Enterprises, L.P. c/o Oak Hill Advisors 65 East 55th Street New York, NY 10022 Attn: Jennifer Cohen/Shilpa Wani	$ 3,800,000	413,043

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF NOTES TO BE PURCHASED	NUMBER OF SHARES OF BB PREFERRED WARRANT SHARES
General Electric Pension Trust c/o GE Asset Management Incorporated 3001 Summer Street P.O. Box 7900 Stamford, CT 06904-7900 Attn: Daniel L. Furman	$ 8,000,000	869,565

SCHEDULE B
(to Senior Secured Note and Warrant Purchase Agreement)

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"*Accounts*" means, with respect to any Person, all of such Person's now existing and future: (a) accounts (as defined in the UCC), and any and all other receivables, including, without limitation, all accounts created by, or arising from, all of such Person's sales, leases, rentals of goods or renditions of services to its customers (whether or not they have been earned by performance), including but not limited to, those accounts arising under any of such Person's trade names, logos or styles, or through any of such Person's divisions; (b) any and all instruments, documents, chattel paper (including electronic chattel paper), contracts and contract rights (all as defined in the UCC); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant to any of the foregoing; (f) guaranties, supporting obligations, payment intangibles and letter of credit rights (all as defined in the UCC); (g) insurance policies or rights relating to any of the foregoing; (h) general intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software thereto; (i) notes, deposits or property of account debtors securing the obligations of any such account debtors to such Person; and (j) cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*Affiliate*" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, "*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "*Affiliate*" is a reference to an Affiliate of the Company.

"*Asset Disposition*" means any transaction, or series of related transactions, pursuant to which the Company or any of its Subsidiaries sells, assigns, transfers or otherwise disposes of any property (whether now owned or hereafter acquired) yielding proceeds to any Credit Party in excess of $500,000 for any such transaction or series of related transactions to any other Person (other than the Company or any Domestic Subsidiary), in each case, whether or not the consideration therefor consists of cash, securities or other assets, excluding any sales of Inventory in the ordinary course of business on ordinary business terms; *provided*, *however*, that, notwithstanding the foregoing, any sale, assignment, transfer or other disposal of any property by the Company or any Subsidiary of the Company permitted by **Section 10.2 (a), (b)** or **(c)** shall not be deemed to be an Asset Disposition.

"*Bankruptcy Code*" is defined in **Section 2.4.**

"*Business Day*" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

"*Capital Lease*" means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

"*Capitalized Rentals*" of any Person means as of the date of any determination thereof the amount at which the aggregate Rentals due and to become due under all Capital Leases under which such Person is a lessee would be reflected as a liability on a consolidated balance sheet of such Person.

"*Closing*" is defined in **Section 1.3**.

"*Change in Control*" means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither a Person who holds any shares of Series B/P Preferred Stock of the Company as of the date the first share of Series B/P Preferred Stock was issued (an "*Initial B/P Holder*") nor an Affiliate of an Initial B/P Holder, or to two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company (a "*Group*") that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

"*Code*" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"*Collateral*" is defined in **Section 3.1.**

"*Collateral Agent*" means LB I Group Inc. in its capacity as contractual representative for itself and the Purchasers pursuant to **Section 21** hereof and any successor Collateral Agent appointed pursuant **Section 21**.

"*Collateral Documents*" means the Pledge Agreement and all other mortgages, deeds of trust, security agreements, assignments, control account agreements, financing statements and other documents or instruments as shall from time to time secure the Obligations.

"*Commitment Letter*" is defined in **Section 4.5**.

"*Company Guaranty*" is defined in **Section 2.3**.

"*Confidential Information*" is defined in **Section 20**.

"*Consolidated EBITDA*" means, with reference to any period, the EBITDA of the Company and its Subsidiaries determined on a consolidated basis for such period.

"*Consolidated Net Tangible Assets*" means as of the date of any determination thereof the total amount of all Tangible Assets of the Company and its Subsidiaries determined on a consolidated basis (and without duplication) in accordance with GAAP.

"*Consolidated Secured Indebtedness*" means as of the date of any determination thereof all secured Indebtedness of the Company and its Subsidiaries determined on a consolidated basis (and without duplication but after eliminating intercompany items) in accordance with GAAP.

"*Credit Party*" means the Borrower, the Company and any Domestic Subsidiary.

"*Default*" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"*Documents of Title*" shall mean all present and future documents (as defined in the UCC), and any and all warehouse receipts, bills of lading, shipping documents, chattel paper, instruments and similar documents, all whether negotiable or not.

"*Domestic Subsidiary*" means a Subsidiary of the Company formed under the laws of any state of the United States or the District of Columbia.

"*Environmental Laws*" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"*Equipment*" means all equipment (as defined in the UCC), including, without limitation (whether or not included in the UCC definition of "equipment"), all furniture, furnishings, fixtures and machinery, and all parts thereof and all additions and accessions thereto and replacements therefor and all cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*EBITDA*" for any Person during any period means Net Income of such Person for such period plus all amounts deducted in arriving at such Net Income amount in respect of (a) Interest

Expense for such period, *plus* (b) Federal, state and local income taxes for such period, *plus* (c) all amounts charged for depreciation of fixed assets and amortization of intangible assets during such period, *plus* (d) all non-cash, non-recurring or extraordinary charges, expenses or losses for such period, *minus* (e) non-cash gains, non-recurring gains, and extraordinary gains, all determined in accordance with GAAP.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"*ERISA Affiliate*" means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under Section 414 of the Code.

"*Event of Default*" is defined in **Section 11**.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Foreign Subsidiary*" means a Subsidiary of the Company that is not a Domestic Subsidiary.

"*Fraudulent Conveyance*" is defined in **Section 2.3**.

"*GAAP*" means generally accepted accounting principles as in effect from time to time in the United States of America.

"*General Intangibles*" means, as to any Person, all "general intangibles" as defined in the UCC, now owned or hereafter acquired, including, without limitation (whether or not included in the UCC definition of "general intangibles"), all of such Person's then owned or existing and future acquired or arising general intangibles, causes in action and causes of action and all other intangible personal property of such Person of every kind and nature, including, without limitation, Intellectual Property, franchises, tax refund claims, reversions or any rights thereto and any other amounts payable to such Person from any rights and claims against carriers and shippers, rights to indemnification, and business interruption, property, casualty or any similar type of insurance and any proceeds thereof, and all cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*Governmental Authority*" means

(a) the government of

(i) the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"*Guaranty*" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any Indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such Indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such Indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such Indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of any other Person to make payment of the Indebtedness or obligation; or

(d) otherwise to assure the owner of such Indebtedness or obligation against loss in respect thereof.

In any computation of the Indebtedness or other liabilities of the obligor under any Guaranty, the Indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

"*Hazardous Material*" means any and all pollutants, toxic or hazardous wastes or any other substances that pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is restricted, prohibited or penalized by any applicable Environmental Law (including, without limitation, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

"*holder*" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to **Section 13.1**.

"*Indebtedness*" with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable preferred stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) all payment obligations of such Person with respect to interest rate swaps, currency swaps and similar obligations; and

(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

"*Intellectual Property*" means all present and future designs, patents, patent rights and applications therefor, trademarks and registrations or applications therefor, trade names, inventions, copyrights and all applications and registrations therefor, software or computer programs, in-bound licensed rights, trade secrets, methods, processes, know-how, drawings, specifications, descriptions, and all memoranda, notes and records with respect to any research and development, whether now owned or hereafter acquired, and all goodwill associated with any of the foregoing.

"*Interest Expense*" of the Company and its Subsidiaries for any period means all interest (including the interest component of Rentals on Capital Leases) and all amortization of debt discount and expense on any particular Indebtedness (including, without limitation, payment-in-kind, zero coupon and other like securities) for which such calculations are being made. Computations of Interest Expense on a *pro forma* basis for Indebtedness having a variable interest rate shall be calculated at the rate in effect on the date of any determination.

"*Inventory*" means, as to any Person, all "inventory" of such Person as defined in the UCC including, without limitation (whether or not included in the UCC definition of "inventory"), all of such Person's then owned or existing and future acquired or arising: (a) inventory, merchandise, goods and other personal property intended for sale or lease or for display or demonstration; (b) work in process; (c) raw materials and other materials and supplies of every nature and description used or which might be used in connection with the manufacture, packing, shipping, advertising, selling, leasing or furnishing of the foregoing or otherwise used or consumed in the conduct of business; (d) documents evidencing, and General Intangibles relating to, any of the foregoing; and (e) all cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*Investment Property*" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

"*Investments*" means all investments, in cash or by delivery of property, made directly or indirectly in any property or assets of any Person or in any Person, whether by acquisition of shares of capital stock, Indebtedness or other obligations or Securities or by loan, advance, capital contribution or otherwise.

"*Knowledge*" means, as to the Company, the actual knowledge of any officer, director or employee of the Company or any Subsidiary of the Company after reasonable investigation.

"*Lien*" means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

"*Make- Whole Amount*" means, with respect to any principal prepayment for which the Make-Whole Amount is applicable, an amount determined with reference to the following formula:

Make-Whole Amount = *pmt* x (.40 – (*qtr* x .0167))

where:

pmt = the amount of the applicable principal prepayment; and

qtr = the number which is the quotient of: (x) the fewer of the number of months elapsed subsequent to the date of the Closing and the date upon which (i) an Event of Default occurs and continues for more than 30 days notwithstanding the fact that such Event of Default is cured thereafter, or (ii) the applicable prepayment is made; divided by (y) three.

Notwithstanding the foregoing to the contrary, so long as no Event of Default shall have occurred and be continuing, the Make-Whole Amount for any voluntary principal prepayment on the Notes of up to $40,000,000 in the aggregate at any time after the second anniversary of the Closing shall be equal to 10% of such principal prepayment if the Company shall have, prior to or at such time, closed one or more equity financings (other than in connection with the issuance of the Series B Preferred Stock of the Company) in an aggregate gross amount of at least $40,000,000; *provided*, *however*, that the $40,000,000 maximum amount described in this proviso for the alternate Make-Whole Amount shall be reduced dollar for dollar by the amount of any mandatory prepayments made pursuant to **Section 8.1**.

"*Mandatory Prepayment Event*" means, with respect to any Credit Party, the occurrence of an Asset Disposition in connection with such Credit Party, the receipt by such Credit Party of any cash insurance proceeds for damaged or destroyed property that yields gross proceeds to such Credit Party in excess of $500,000, or the receipt by such Credit Party of any cash proceeds from any judgment awards or settlements that yield gross proceeds to such Credit Party in excess of $500,000.

"*Material*" means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole.

"*Material Adverse Effect*" means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, or (b) the ability of the Company or the Borrower to perform its obligations under this Agreement and the Notes and Warrants, or (c) the validity or enforceability of this Agreement or the Notes or the Warrants.

"*Merger*" is defined in the opening recitals to this Agreement.

"Merger Agreement" is defined in the opening recitals to this Agreement.

"*Minimum Holders*" means, at any time, the holders of at least 31% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company).

"*Minority Interests*" means, with respect to any Person, any shares of stock of any class of a Subsidiary of such Person (other than directors' qualifying shares as required by law) that are not owned by such Person and/or one or more of its Subsidiaries. Minority Interests shall be valued by valuing Minority Interests constituting preferred stock at the voluntary or involuntary liquidating value of such preferred stock, whichever is greater, and by valuing Minority Interests constituting common stock at the book value of capital and surplus applicable thereto adjusted, if necessary, to reflect any changes from the book value of such common stock required by the foregoing method of valuing Minority Interests in preferred stock.

"*Multiemployer Plan*" means any Plan that is a "multiemployer plan" (as such term is defined in Section 400 l(a)(3) of ERISA).

"*Net Income*" for any Person during any period means the gross revenues of such Person and its Subsidiaries for such period less all expenses and other proper charges (including taxes on income), determined on a consolidated basis after eliminating earnings or losses attributable to outstanding Minority Interests, but excluding in any event:

(a) any gains or losses on the sale or other disposition of Investments or fixed or capital assets, and any taxes on such excluded gains and any tax deductions or credits on account of any such excluded losses;

(b) the proceeds of any life insurance policy;

(c) net earnings and losses of any Subsidiary accrued prior to the date it became a Subsidiary;

(d) net earnings and losses of any corporation (other than a Subsidiary), substantially all the assets of which have been acquired in any manner by such Person or any Subsidiary thereof, realized by such corporation prior to the date of such acquisition;

(e) net earnings and losses of any corporation (other than a Subsidiary) with which such Person or any Subsidiary thereof shall have consolidated or which shall have merged into or with such Person or any Subsidiary thereof prior to the date of such consolidation or merger;

(f) net earnings of any business entity (other than a Subsidiary) in which such Person or any Subsidiary thereof has an ownership interest unless such net earnings shall have actually been received by such Person or any Subsidiary thereof in the form of cash distributions;

(g) any portion of the net earnings of any Subsidiary which for any reason is unavailable for payment of dividends to such Person or any Subsidiary thereof;

(h) earnings resulting from any reappraisal, revaluation or write-up of assets;

(i) any deferred or other credit representing any excess of the equity in any Subsidiary of such Person at the date of acquisition thereof over the amount invested in such Subsidiary;

(j) any gain arising from the acquisition of any securities of such Person or any Subsidiary thereof;

(k) any reversal of any contingency reserve, except to the extent that provision for such contingency reserve shall have been made from income arising during such period; and

(l) any other extraordinary gain.

"*Net Proceeds*" means:

(a) with respect to any Asset Disposition by any Person, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Lien which is permitted by **Section 10.3** on any property (other than any Indebtedness assumed by the purchaser of such property and Indebtedness evidenced by the Notes) which is required to be, and is, repaid in connection with such Asset Disposition, (ii) reasonable expenses related thereto incurred by such Person in connection with the Asset Disposition, (iii) transfer taxes paid or due to be paid by such Person to any taxing authorities in connection with such Asset Disposition, and (iv) any amount of reserves properly taken on the balance sheet of the Person making the Asset Disposition, as reasonably determined by the Board of Directors of such Person in its good faith judgment; *provided* that such reserves shall be deemed part of Net Proceeds if and to the extent such reserves are not actually paid by the applicable Person and are removed from such Person's balance sheet;

(b) with respect to any insurance proceeds received by any Person in connection with the damage or destruction of any property or asset, the amount of cash received (directly or indirectly) by or on behalf of such Person in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Lien which is permitted by **Section 10.3** on the damaged or destroyed property or asset (other than any Indebtedness evidenced by the Notes) and (ii) reasonable expenses related thereto incurred by such Person in connection with the collection of such insurance proceeds;

(c) with respect to any judgment awards or settlements received by any Person, the amount of cash received (directly or indirectly) by or on behalf of such Person in

connection therewith after deducting therefrom only reasonable expenses related thereto incurred by such Person in connection with the obtaining of such award or the negotiation of such settlement; and

(d) cash received by any Person from the conversion of any non-cash proceeds received in connection with an Asset Disposition, insurance awards or any judgments or settlements, subject to any applicable reductions noted in clauses (a), (b) and (c) above.

"*New Subsidiary*" is defined in **Section 9.7**.

"*Notes*" is defined in **Section 1**.

"*Obligations*" is defined in **Section 2.2**.

"*Officer's Certificate*" means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

"Orphan Medical" is defined in the opening recitals of this Agreement.

"*Orphan Sub*" is defined in **Section 8.4(b)**.

"*Other Collateral*" means:

(a) all other goods and property, whether or not delivered, including, without limitation, such other goods and property: (i) the sale or lease of which gives or purports to give rise to any Account or other Collateral, including, but not limited to, all Inventory and other merchandise returned or rejected by or repossessed from customers; (ii) securing any Account or other Collateral, including, without limitation, all rights as a consignor, a consignee, an unpaid vendor or lienor (including, without limitation, stoppage in transit, replevin and reclamation) with respect to such other goods and properties; or (iii) warranty claims relating to goods;

(b) all substitutes and replacements for, accessories, attachments, and other additions to, any of the above and any and all products or masses into which any goods are physically united such that their identity is lost;

(c) all policies and certificates of insurance relating to any of the foregoing, now owned or hereafter acquired, evidencing or pertaining to any and all items of Collateral;

(d) all files, correspondence, computer programs, tapes, discs and related data processing software which contain information identifying or pertaining to any of the Collateral or any account debtor, or showing the amounts thereof or payments thereon or otherwise necessary or helpful in the realization thereon or the collection thereof; and

(e) any and all products and proceeds of the foregoing (including, but not limited to, any claim to any item of Collateral and any claim against any third party for loss of, damage to or destruction of any or all of, the Collateral or for proceeds payable

under, or unearned premiums with respect to, policies of insurance) in whatever form, including, but not limited to, cash, instruments, chattel paper, security agreements and other documents.

"*PBGC*" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

"*Permitted Acquisition Indebtedness*" is defined in **Section 10.1(a)(v)**.

"*Permitted Foreign Subsidiary Transfer*" means the transfer by the Company or a Subsidiary of the Company other than the Borrower (or a Subsidiary of the Borrower) of the international rights to a Product candidate to a Foreign Subsidiary, all pursuant to documentation and on terms reasonably acceptable to the Purchasers.

"*Permitted Investments*" means:

(a) Investments by the Company and its Subsidiaries in and to the Company or a:

(i) Domestic Subsidiary, including any Investment in a corporation which, after giving effect to such Investment, will become a Domestic Subsidiary as permitted by **Section 10.5(a)**; or

(ii) Foreign Subsidiary permitted to be created and capitalized by **Section 10.5(b)** so long as:

(1) such Foreign Subsidiary is established solely to carry out the Company's or any of its Subsidiaries' business operations in a particular foreign jurisdictions where it is necessary or prudent, in the good faith determination of the Board of Directors of the Company, to establish a separate legal entity under local law;

(2) such Investment is comprised of only that amount of capital and other property as is determined to be necessary from time to time, in the good faith discretion of the Board of Directors of the Company, to conduct the ordinary and intended business operations of such Foreign Subsidiary; and

(3) such Investment would not be reasonably expected to have a Material Adverse Effect or otherwise materially adversely effect the value or priority of the Collateral, taken as a whole, for the prompt and full payment of the Obligations;

(b) Investments representing loans or advances in the usual and ordinary course of business to officers, directors and employees for expenses (including moving expenses related to a transfer) incidental to carrying on the business of the Company or any Domestic Subsidiary;

(c) Investments in property or assets to be used in the ordinary course of the business of the Company and its Subsidiaries as described in **Section 9.6** of this Agreement;

(d) Investments representing travel advances in the usual and ordinary course of business to officers and employees of the Company and its Subsidiaries incidental to carrying-on the business of the Company or any Subsidiaries;

(e) receivables arising from the sale of goods and services in the ordinary course of business of the Company and its Subsidiaries;

(f) Investments in commercial paper or corporate debt obligation of corporations organized under the laws of the United States or any state thereof maturing in 270 days or less from the date of issuance which, at the time of acquisition by the Company or any Subsidiary, is accorded the highest rating by Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., a New York corporation, or by Moody's Investors Service, Inc.;

(g) Investments in direct obligations of the United States of America or any agency or instrumentality of the United States of America, the payment or guarantee of which constitutes a full faith and credit obligation of the United States of America, in either case, maturing within twelve months from the date of acquisition thereof;

(h) Investments in certificates of deposit and time deposits maturing within one year from the date of issuance thereof, issued by a bank or trust company organized under the laws of the United States or any State thereof; *provided* that at the time of acquisition thereof by the Company or a Subsidiary, (i) the senior unsecured long-term debt of such bank or trust company or of the holding company of such bank or trust company is rated AA or better by Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., a New York corporation, or "Aa2" or better by Moody's Investors Service, Inc. or (ii) such Investments are fully insured by the Federal Depository Insurance Corporation; and

(i) Investments in any money market fund which invests substantially all of its assets in obligations described in clauses (g) and (h) above.

"*Permitted Liens*" means:

(a) Liens in favor of the Collateral Agent for the benefit of the Purchasers pursuant to this Agreement or any other Related Document;

(b) Liens for property taxes and assessments or governmental charges or levies and Liens securing claims or demands of mechanics and materialmen so long as the payment thereof is not at the time required by **Section 9.4**;

(c) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Company or a Subsidiary thereof shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(d) Liens incidental to the conduct of business or the ownership of properties and assets (including Liens in connection with worker's compensation, unemployment insurance and other like laws, warehousemen's and attorneys' liens and statutory landlords' liens); *provided* in each case, the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings; and

(e) minor survey exceptions or minor encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which are necessary for the conduct of the activities of the Company and its Subsidiaries or which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not in any event materially impair their use in the operation of the business of the Company and its Subsidiaries.

"*Permitted Other Secured Indebtedness*" is defined in **Section 10.1(a)(iv)**.

"*Permitted Purchase Money Indebtedness*" is defined in **Section 10.1(a)(iii)**.

"*Permitted Receivables/Inventory Indebtedness*" is defined in **Section 10.1(a)(iii)**.

"*Person*" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"*Plan*" means an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

"*Pledge Agreement*" means the Stock Pledge Agreement, dated as of the date of the Closing, executed by the Company in favor of the Collateral Agent for the benefit of the Purchasers, pursuant to which the Company shall have pledged and collaterally assigned 100% of the capital stock of the Borrower as security for the prompt and full payment and performance of the Obligations.

"*Product*" means a pharmaceutical product, drug or medication.

"*property*" or "*properties*" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"*Pro Rata Portion*" means, with respect to any holder of a Note upon the occurrence of a Mandatory Prepayment Event, the amount determined by multiplying the Net Proceeds received in connection with such Mandatory Prepayment Event by a fraction the numerator of which is the aggregate outstanding principal amount of all Notes held by such holder at such time and the denominator of which is the aggregate outstanding principal amount of all outstanding Notes at such time.

"*QPAM Exemption*" means the Prohibited Transaction Class Exemption 84-14 issued by the United States Department of Labor.

"*Related Documents*" means this Agreement, the Notes, the Warrants, the Collateral Documents and each other instrument or document to be delivered hereunder or thereunder or otherwise in connection therewith.

"*Rentals*" means and includes as of the date of any determination thereof all fixed payments (including as such all payments which the lessee is obligated to make to the lessor on termination of the lease or surrender of the property) payable by the Company or a Subsidiary, as lessee or sublessee under a lease of real or personal property, but shall be exclusive of any amounts required to be paid by the Company or a Subsidiary (whether or not designated as rents or additional rents) on account of maintenance, repairs, insurance, taxes and similar charges. Fixed rents under any so-called "percentage leases" shall be computed solely on the basis of the minimum rents, if any, required to be paid by the lessee regardless of sales volume or gross revenues.

"*Required Holders*" means, at any time, the holders of at least 65% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company).

"*Responsible Officer*" means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

"*Securities*" is defined in **Section 5.13**.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time.

"*Senior Financial Officer*" means the chief financial officer, principal accounting officer, treasurer or controller of the Company.

"*Subsidiary*" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of the Company. For the avoidance of doubt, any reference to a Subsidiary of the Company in this Agreement shall mean and include the Borrower and each Subsidiary of the Borrower.

"*Tangible Assets*" means as of the date of any determination thereof for any Person, the total amount of all assets of such Person and its Subsidiaries (less depreciation, depletion and

other properly deductible valuation reserves) after deducting, without duplication, good will, patents, trade names, trade marks, copyrights, franchises, experimental expense, organization expense, unamortized debt discount and expense, deferred assets other than prepaid insurance and prepaid taxes, the excess of cost of shares acquired over book value of related assets and such other assets as are properly classified as "intangible assets" in accordance with GAAP.

"*UCC*" means the Uniform Commercial Code as in effect on the date hereof in the State of New York, as amended from time to time, and any successor statute.

"*Voting Stock*" means Securities of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"*Wholly-owned Subsidiary*" means, at any time, any Subsidiary one hundred percent (100%) of all of the equity interests (except directors' qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company's other Wholly-owned Subsidiaries at such time.

Exhibit A
(to Senior Secured Note and Warrant Purchase Agreement)

FORM OF NOTE

THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272 AND 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. FOR INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTE, PLEASE CONTACT [NAME AND TITLE OF CONTACT PERSON] OF THE BORROWER AT [CONTACT PERSON'S PHONE NUMBER] OR [CONTACT PERSON'S ADDRESS].

THIS SENIOR SECURED PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, ACCORDINGLY, MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THIS SENIOR SECURED PROMISSORY NOTE AND RESTRICTING ITS TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE BORROWER AT ITS PRINCIPAL EXECUTIVE OFFICES.

TWIST MERGER SUB, INC.

15% Senior Secured Note due _____, 2011

No. _____ Date
$ _____

FOR VALUE RECEIVED, the undersigned, TWIST MERGER SUB, INC. (herein called the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to _____, or registered assigns, the principal sum of _____ DOLLARS on _____, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 15% per annum from the date hereof, payable quarterly in arrears, on the last day of March, June, September and December in each year, commencing with September 30, 2005, until the principal hereof shall have become due and payable; *provided*, *however*, interest on such unpaid balance shall accrue at the rate of 17% per annum during the continuance of any Event of Default.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at such place as the holder of this Note shall have designated by written notice to the Borrower as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Notes (herein called the "*Notes*") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005 (as from time to time amended, the "*Note Purchase Agreement*"), among the Borrower, Jazz Pharmaceuticals, Inc., LB I Group Inc., as Collateral Agent and a Purchaser, and the other

Purchasers named therein and is entitled to the benefits thereof. This Note is secured pursuant to the provisions of the Note Purchase Agreement and other Related Documents (defined in the Note Purchase Agreement) and is entitled to the benefit of the rights and security provided thereby. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in **Section 20** of the Note Purchase Agreement and (ii) to have made the representations set forth in **Section 6** of the Note Purchase Agreement.

As provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

To the fullest extent permitted by applicable law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the obligations or liabilities under the Note Purchase Agreement or evidenced hereby, (b) all rights to notice and hearing prior to the taking of possession or control of any collateral (including by way of attachment or replevy), and (c) the benefit of all valuation, appraisal and exemption laws.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

BORROWER ACKNOWLEDGES THAT THE BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS NOTE.

TWIST MERGER SUB, INC.

By _____
[Title]

EXHIBIT B

FORM OF WARRANT

THE SECURITIES REPRESENTED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT, ARE SUBJECT TO CERTAIN VOTING RESTRICTIONS PURSUANT TO A VOTING AGREEMENT RELATING TO SUCH SECURITIES, AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF SUCH AGREEMENT. A COPY OF SUCH VOTING AGREEMENT WILL BE FURNISHED TO THE REGISTERED HOLDER OF THIS WARRANT WITHOUT CHARGE UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THIS WARRANT OR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG THE HOLDER HEREOF, THE COMPANY AND CERTAIN HOLDERS OF SECURITIES OF THE COMPANY. A COPY OF SUCH AGREEMENT WILL BE FURNISHED TO THE REGISTERED HOLDER OF THIS WARRANT WITHOUT CHARGE UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

Warrant No.: BB-«warrantno»
Date of Issuance: June 24, 2005

Number of Shares: «shares»
(subject to adjustment)

JAZZ PHARMACEUTICALS, INC. WARRANT NO. BB-«warrantno»

Series BB Preferred Stock Warrant

This Warrant No. BB-«warrantno» (this "Warrant") of Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that «holder», the initial holder of this Warrant, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 6 below), up to «shares» shares of Series BB Preferred Stock of the Company ("Series BB Preferred Stock"), at a purchase price of $1.84 per share. This Warrant is one of a series of warrants to purchase in the aggregate 8,695,652 shares of Series BB Preferred Stock (collectively, the "Series BB Warrants") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated June 24, 2005, by and among the Company and the initial holders of the Series BB Warrants (the

"Purchase Agreement"). The shares purchasable upon exercise of this Warrant and the purchase price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Purchase Price," respectively.

1. **Exercise.**

(a) **Manner of Exercise.** This Warrant may be exercised by the Registered Holder, in whole or in part, by surrendering this Warrant, with the exercise form appended hereto as Exhibit A duly executed by such Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full of the Purchase Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise unless exercised pursuant to the Net Issue Exercise provisions of Section 1(c) below. The Purchase Price may be paid by cash, check, or wire transfer.

(b) **Effective Time of Exercise.** Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 1(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 1(d) below shall be deemed to have become the holder or holders of record of the Warrant Stock represented by such certificates.

(c) **Net Issue Exercise.**

(i) In lieu of exercising this Warrant in the manner provided above in Section 1(a), the Registered Holder may elect to receive shares equal to the value of this Warrant (or the portion of this Warrant being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election on the exercise form appended hereto as Exhibit A duly executed by such Registered Holder, in which event the Company shall issue to such Registered Holder a number of shares of Warrant Stock computed using the following formula:

$$X = \frac{Y\ (A—B)}{A}$$

Where X = The number of shares of Warrant Stock to be issued to the Registered Holder.

Y = The number of shares of Warrant Stock purchasable under this Warrant (at the date of such calculation).

A = The fair market value of one share of Warrant Stock (at the date of such calculation).

B = The Purchase Price (as adjusted through the date of such calculation).

(ii) For purposes of this Section 1(c), the fair market value of Warrant Stock on the date of calculation shall mean with respect to each share of Warrant Stock:

(A) if the Common Stock of the Company ("Common Stock") is traded on a securities exchange or The Nasdaq Stock Market, the fair market value shall be deemed to be the product of (x) the closing price on the date of calculation (or, if there are no sales for such date, then on the last date on which there were sales) and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible on such date; or

(B) if the Common Stock is actively traded over the counter, the fair market value shall be deemed to be the product of (x) the closing bid or sales price (whichever is applicable) on the date of calculation (or, if the date of calculation is not a trading day, the last trading day prior to the date of calculation) and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible on such date; or

(C) if neither (A) nor (B) is applicable, the fair market value of Warrant Stock shall be determined in good faith by the Company's Board of Directors.

(d) **Delivery to Registered Holder.** As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within ten (10) days thereafter, the Company at its expense will cause to be issued in the name of, and delivered to, the Registered Holder, or as such Registered Holder (upon payment by such Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of shares of Warrant Stock to which such Registered Holder shall be entitled, and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock equal (without giving effect to any adjustment therein) to the number of such shares called for on the face of this Warrant minus the number of such shares purchased by the Registered Holder upon such exercise as provided in Section 1(a) or 1(c) above.

2. **Adjustments.**

(a) **Redemption or Conversion of Preferred Stock.** If all of the Series BB Preferred Stock is redeemed or converted into shares of Common Stock (including without limitation pursuant to the automatic conversion provisions of the Company's certificate of incorporation providing for the conversion of the Series BB Preferred Stock into Common Stock in connection with a qualified initial public offering of the Company's securities), then this Warrant shall automatically become exercisable for that number of shares of Common Stock equal to the number of shares of Common Stock that would have been received if this Warrant had been exercised in full and the shares of Series BB Preferred Stock received thereupon had been simultaneously converted into shares of Common Stock immediately prior to such event, and the Purchase Price shall be automatically adjusted to equal the amount obtained by multiplying the then existing Purchase Price by a fraction, (i) the numerator of which shall be the

aggregate Purchase Price of the shares of Series BB Preferred Stock for which this Warrant was exercisable immediately prior to such redemption or conversion, and (ii) the denominator of which shall be the number of shares of Common Stock for which this Warrant is exercisable immediately after such redemption or conversion.

(b) **Stock Splits and Dividends.** If the outstanding shares of Warrant Stock shall be subdivided into a greater number of shares or a dividend in Warrant Stock shall be paid in respect of Warrant Stock, the Purchase Price in effect immediately prior to such subdivision or at the record date of such dividend shall simultaneously with the effectiveness of such subdivision or immediately after the record date of such dividend be proportionately reduced. If outstanding shares of Warrant Stock shall be combined into a smaller number of shares, the Purchase Price in effect immediately prior to such combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Purchase Price, the number of shares of Warrant Stock purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Purchase Price in effect immediately prior to such adjustment, by (ii) the Purchase Price in effect immediately after such adjustment.

(c) **Reclassification, Etc.** In case there occurs any reclassification or change of the outstanding securities of the Company or of any reorganization of the Company (or any other corporation the stock or securities of which are at the time receivable upon the exercise of this Warrant) or any similar corporate reorganization on or after the date hereof, then and in each such case the Registered Holder, upon the exercise hereof at any time after the consummation of such reclassification, change, or reorganization, shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which such Registered Holder would have been entitled upon such consummation if such Registered Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment pursuant to the provisions of this Section 2.

(d) **Adjustment Certificate.** When any adjustment is required to be made in the Warrant Stock or the Purchase Price pursuant to this Section 2, the Company shall promptly mail to the Registered Holder a certificate setting forth (i) a brief statement of the facts requiring such adjustment, (ii) the Purchase Price after such adjustment and (iii) the kind and amount of stock or other securities or property into which this Warrant shall be exercisable after such adjustment.

3. **Transfers.**

(a) **Unregistered Security.** Each holder of this Warrant acknowledges that this Warrant, the Warrant Stock and the Common Stock issuable upon conversion of the Warrant Stock have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and agrees that in no event will it dispose of all or any portion of this Warrant, the Warrant Stock or the Common Stock issuable upon conversion of the Warrant Stock unless and until (a) it has complied with the provisions of Section 3(b) below, and (b) if reasonably requested by the Company, the Registered Holder shall have furnished the Company with an opinion of counsel

reasonably satisfactory in form and substance to the Company and the Company's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken. Without limiting the foregoing, the Registered Holder, by accepting this Warrant, agrees that it may transfer this Warrant (or any portion hereof) only to one of its Affiliates (as defined in the Purchase Agreement) or to any other person or entity that is acceptable to the Company, provided that, in the case of any transfer, the applicable transferee must agree in writing to be subject to the terms of this Warrant, the Investor Rights Agreement, the First Refusal and Co-Sale Agreement and the Voting Agreement (as such terms are defined below); provided, however, that, except with respect to transfers to its Affiliates, the Registered Holder hereby covenants not to effect such transfer if such transfer either would invalidate the securities laws exemptions pursuant to which this Warrant was originally offered and sold or would itself require registration and/or qualification under the Securities Act or applicable state securities laws. Each certificate evidencing this Warrant transferred as provided above shall bear an appropriate restrictive legend substantially to the foregoing effect.

For purposes of this Warrant, (i) "Investor Rights Agreement" means that certain Second Amended and Restated Investor Rights Agreement, dated as of June 24, 2005, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of warrants to purchase Series BB Preferred Stock (and any shares issued upon exercise of such warrants) and certain holders of the Common Stock, (ii) "First Refusal and Co-Sale Agreement" means that certain Second Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of June 24, 2005, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of Series BB Preferred Stock and the holders of warrants to purchase Series BB Preferred Stock (and any shares issued upon exercise of such warrants) and the persons identified as "Executives" therein and (iii) "Voting Agreement" means that certain Second Amended and Restated Voting Agreement, dated as of June 24, 2005, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of Series BB Preferred Stock and the holders of warrants to purchase Series BB Preferred Stock (and any shares issued upon exercise of such warrants) and certain holders of the Common Stock.

(b) **Transferability.** Subject to the provisions of this Section 3 and the provisions of Section 5, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment in the form of Exhibit B hereto at the principal office of the Company. Any purported transfer of all or any portion of this Warrant in violation of the provisions of this Warrant shall be null and void.

(c) **Warrant Register.** The Company will maintain a register containing the names and addresses of the Registered Holders of this Warrant and all other warrants to purchase Series BB Preferred Stock. Until any transfer of this Warrant is made in the warrant register, the Company may treat the Registered Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary. Any Registered Holder may change such Registered Holder's address as shown on the warrant register by written notice to the Company requesting such change.

4. **Representations and Warranties of the Registered Holder.** The Registered Holder hereby represents and warrants to the Company that:

(a) **Authorization.** The Registered Holder has full power and authority to enter into, and perform its obligations under, this Warrant. This Warrant, when executed and delivered by the Registered Holder, will constitute a valid and legally binding obligation of the Registered Holder, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) **Purchase Entirely for Own Account.** This Warrant is issued to the Registered Holder in reliance upon the Registered Holder's representation to the Company, which by the Registered Holder's acceptance of this Warrant, the Registered Holder hereby confirms, that the Warrant to be acquired by the Registered Holder, the Warrant Stock and the Common Stock to be issued upon the conversion of the Warrant Stock (collectively, the "Securities") will be acquired for investment for the Registered Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Registered Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. By accepting this Warrant, the Registered Holder further represents that the Registered Holder does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities. The Registered Holder has not been formed for the specific purpose of acquiring the Securities.

(c) **Disclosure of Information.** The Registered Holder has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Securities with the Company's management and has had an opportunity to review the Company's facilities. The Registered Holder understands that such discussions, as well as any written information delivered by the Company to the Registered Holder, were intended to describe the aspects of the Company's business which it believes to be material.

(d) **Restricted Securities.** The Registered Holder understands that the Securities have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Registered Holder's representations as expressed herein. The Registered Holder understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Registered Holder must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Registered Holder acknowledges that the Company has no obligation to register or qualify

the Securities for resale. The Registered Holder further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Registered Holder's control, and which the Company is under no obligation and may not be able to satisfy.

(e) **No Public Market.** The Registered Holder understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for the Securities.

(f) **Accredited Investor.** The Registered Holder is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

5. **Market Standoff.**

(a) **Market Standoff.** The Registered Holder hereby agrees that, if so requested by the Company and the Underwriter's Representative (as defined below), if any, the Registered Holder shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of this Warrant or other securities of the Company ("Market Standoff") without the prior written consent of the Company and the Underwriter's Representative for such period of time (a) not to exceed one hundred eighty (180) days following the effective date of a Registration Statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Registered Holder of a proposed follow-on offering and ending 90 days after the effective date of the Registration Statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that the Registered Holder shall not be required to agree to a Market Standoff for a period of time that commences less than thirty (30) days after the expiration of another period of time during which the Registered Holder has agreed to a Market Standoff. The obligations of the Registered Holder under this Section 5 shall be conditioned upon similar agreements being in effect with each other stockholder of the Company who is an officer, or director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering. For purposes of this Warrant, the "Underwriter's Representative" is the representative the underwriter or underwriters selected for the underwriting of a public offering of the Company's securities.

(b) **Stop-Transfer Instructions.** In order to enforce the covenants set forth in Section 3 and Section 5(a), the Company may impose stop-transfer instructions with respect to the securities of the Registered Holder (and the securities of every other person subject to the restrictions in Section 3 and Section 5(a)).

6. **Termination.** This Warrant (and the right to purchase securities upon exercise hereof) shall terminate on June 24, 2012 (the "Expiration Date").

7. **Notices of Certain Transactions.** In the event that the Company shall propose at any time to:

(a) declare any dividend or distribution upon the Common Stock, whether in cash, property, stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) effect any reclassification or recapitalization of the Common Stock or Preferred Stock outstanding involving a change in the Common Stock or Preferred Stock;

(d) merge or consolidate with or into any other partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature; or

(e) sell, lease, or convey all or substantially all its assets, property or business, or to liquidate, dissolve, or wind up or otherwise consummate a Liquidation Event (as defined in the Company's Second Amended and Restated Certificate of Incorporation); then, in connection with each such event, the Company shall send to the Registered Holder (in accordance with the provisions of Section 23):

(i) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock and/or Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c), (d) and (e) above; and

(ii) in the case of the matters referred to in (c), (d) and (e) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock and/or Preferred Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

8. **Reservation of Stock.** The Company will at all times reserve and keep available, solely for the issuance and delivery upon the exercise of this Warrant, such shares of Warrant Stock (and Common Stock issuable upon conversion of the Warrant Stock) and other stock, securities and property, as from time to time shall be issuable upon the exercise of this Warrant.

9. **Exchange of Warrants.** Upon the surrender by the Registered Holder of any Warrant or Warrants, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 3 hereof, issue and deliver to or upon the order of such Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of such Registered Holder, calling in the aggregate on the face or faces thereof for the number of shares of Series BB Preferred Stock called for on the face or faces of the Warrant or Warrants so surrendered.

10. **Replacement of Warrants.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

11. **No Rights as Stockholder.** Until the exercise of this Warrant, the Registered Holder of this Warrant shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

12. **Additional Rights.** Upon exercise of this Warrant, the Registered Holder shall have and be entitled to exercise the rights granted to the signatories who are holders of Series BB Preferred Stock under each of (a) the Voting Agreement, (b) the First Refusal and Co-Sale Agreement and (c) the Investor Rights Agreement. By its receipt of this Warrant, the Registered Holder agrees to be bound by the Voting Agreement, the First Refusal and Co-Sale Agreement and the Investor Rights Agreement.

13. **No Fractional Shares.** No fractional shares of Series BB Preferred Stock will be issued in connection with any exercise hereunder. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Series BB Preferred Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

14. **Amendment or Waiver.** Any term of the Series BB Warrants may be amended or waived only by an instrument in writing signed by the Company and the holders of Series BB Warrants covering at least sixty-five percent (65%) of the number of shares of Series BB Preferred Stock subject to Series BB Warrants outstanding at the time of such amendment or waiver.

15. **Headings.** The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

16. **Governing Law.** This Warrant shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

17. **Survival of Representations.** Unless otherwise set forth in this Warrant, the warranties, representations and covenants of the Company and the Purchasers contained in or made pursuant to this Warrant shall survive the execution and delivery of this Warrant.

18. **Transfer; Successors and Assigns.** The terms and conditions of this Warrant shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the

parties provided that they have complied with the terms and conditions herein. Nothing in this Warrant, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Warrant, except as expressly provided in this Warrant.

19. **Counterparts.** This Warrant may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

20. **Attorney's Fees.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of this Warrant, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

21. **Severability.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Warrant, (b) the balance of this Warrant shall be interpreted as if such provision were so excluded and (c) the balance of this Warrant shall be enforceable in accordance with its terms.

22. **Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Warrant, upon any breach or default of any other party under this Warrant, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Warrant, or any waiver on the part of any party of any provisions or conditions of this Warrant, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Warrant or by law or otherwise afforded to any party, shall be cumulative and not alternative.

23. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Registered Holder shall be sent to the address as set forth on the signature page of this Warrant or at such other address as the Registered Holder may designate pursuant to Section 3(c) by ten (10) days' advance notice to the Company.

24. **Entire Agreement.** This Warrant and the documents and agreements referred to herein (including the Company's Second Amended and Restated Certificate of Incorporation, Investor Rights Agreement, the First Refusal and Co-Sale Agreement and the Voting Agreement) constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements relating to the subject matter hereof existing between the parties hereto are expressly canceled.

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____
Address: 3180 Porter Drive
Palo Alto, CA 94304

Fax Number: (650) 496-3781

Accepted and Agreed:

REGISTERED HOLDER

«HOLDER»

By: _____
Name: _____
Title: _____

Address:
«address»

[Signature Page to Series BB Preferred Stock Warrant]

EXHIBIT A

EXERCISE FORM

To: Jazz Pharmaceuticals, Inc. Dated: _____

The undersigned, pursuant to the provisions set forth in the attached Warrant No. BB-«warrantno», hereby irrevocably elects to (a) purchase _____ shares of Series BB Preferred Stock covered by such Warrant and herewith makes payment of $_____, representing the full purchase price for such shares at the price per share provided for in such Warrant, or (b) exercise such Warrant for _____ shares purchasable under the Warrant pursuant to the Net Issue Exercise provisions of Section 1(c) of the Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 4 of the Warrant and by its signature below hereby makes such representations and warranties to the Company as of the date hereof.

By: _____
Name: _____
Title: _____
Name of Entity: _____

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned transferor under the attached Warrant with respect to the number of shares of Series BB Preferred Stock covered thereby set forth below, unto:

Name of Assignee	Address/Fax Number	No. of Shares

The undersigned transferor represents that it has complied with all of the provisions of the attached Warrant governing the transfer of such Warrant, including without limitation the provisions of Section 3 thereof, and acknowledges that any purported transfer of all or any part of such Warrant in violation of the terms of the attached Warrant shall be null and void.

Dated: _____ By: _____
Name: _____
Title: _____

The undersigned transferee of the attached Warrant acknowledges the limitations on transfer of the attached Warrant, including without limitation those contained in Section 3 thereof, agrees to be bound by the terms of the attached Warrant and the Investor Rights Agreement, the Right of First Refusal and Co-Sale Agreement and the Voting Agreement (each as defined in the attached Warrant) to the same extent as if the undersigned transferee were the initial holder of the attached Warrant, and shall deliver to the Company together with this assignment form counterpart signature pages to the Investor Rights Agreement, the Right of First Refusal and Co-Sale Agreement and the Voting Agreement.

Dated: _____ By: _____
Name: _____
Title: _____

EXHIBIT 4.2
(to Senior Secured Note and Warrant Purchase Agreement)

Closing: June 24, 2005[1]

List of Closing Deliveries

Principal Note and Warrant Documents

1. Senior Secured Note and Warrant Purchase Agreement dated as of June 24, 2005 by and among Twist Merger Sub, Inc., as the Borrower, Jazz Pharmaceuticals, Inc., as the Company, LB I Group Inc, as the Collateral Agent and a Purchaser, and the other Purchasers party thereto (the "Purchase Agreement").[2]

Schedule A	-	Information Relating to Purchasers
Schedule B	-	Defined Terms
Schedule 5.4	-	Subsidiaries
Schedule 5.5	-	Financials
Schedule 5.7	-	Filings
Schedule 5.8	-	Litigation
Schedule 5.11	-	Intellectual Property
Schedule 5.18	-	Environmental
Schedule 5.19	-	Names
Schedule 5.20	-	Locations; FEIN
Exhibit A	-	Form of Note
Exhibit B	-	Form of Warrant
Exhibit 4.2	-	List of Closing Deliveries

2. Original Notes issued to each Purchaser in the principal amount as indicated below:

Purchaser	Principal Amount
LB I Group Inc.	$ 30,000,000
KKR TRS Holdings, Inc.	$ 25,000,000
Deep Cove Mezzanine, LLC	$ 5,000,000
Cardinal Fund I, L.P.	$ 800,000
FW Jazz Pharma Investors, L.P.	$ 400,000
Oak Hill Credit Alpha Fund, LP	$ 7,000,000
Lerner Enterprises, L.P.	$ 3,800,000
General Electric Pension Trust	$ 8,000,000
Total	$ 80,000,000

1 All documents dated as of June 24, 2005 unless otherwise stated.
2 Each capitalized term used in this **Exhibit 4.2** without definition shall have the meaning ascribed thereto under the Purchase Agreement.

3. Original Warrants issued to each Purchaser for the number of shares of Series BB Preferred Stock as indicated below:

Purchaser	Warrant Shares
LB I Group Inc.	3,260,870
KKR TRS Holdings, Inc.	2,717,391
Deep Cove Mezzanine, LLC	543,478
Cardinal Fund I, L.P.	86,957
FW Jazz Pharma Investors, L.P.	43,478
Oak Hill Credit Alpha Fund, LP	760,870
Lerner Enterprises, L.P.	413,043
General Electric Pension Trust	869,565
Total	8,695,652

Collateral Documents

4. Stock Pledge Agreement executed by the Company in favor of the Collateral Agent for the benefit of the holders of Notes whereby the Company pledges 100% of the issued and outstanding stock of the Borrower.

5. Original Stock Certificate(s) evidencing the pledged shares under the Pledge Agreement noted in item 4 together with an executed stock powers certificate.

6. Intellectual Property Security Agreement executed by the Company in favor of the Collateral Agent for the benefit of the holders of Notes and suitable for filing with the United States Patent and Trademark Office.

7. Intellectual Property Security Agreement of the Borrower in favor of the Collateral Agent for the benefit of the holders of Notes and suitable for filing with the United States Patent and Trademark Office.

8. Control Account Agreement executed by the Borrower, the Collateral Agent and the financial intermediary holding the pledged account pursuant to **Section 9.7** of the Purchase Agreement.

9. UCC Financing Statement naming the Borrower as the debtor and the Collateral Agent as the representative of the secured party and filed with the Secretary of State of Delaware.

10. UCC Financing Statement naming the Company as the debtor and the Collateral Agent as the representative of the secured party and filed with the Secretary of State of Delaware.

11. UCC Financing Statement naming Orphan Medical, Inc., the surviving corporation to the Merger, as the debtor and the Collateral Agent as the representative of the secured party and filed with the Secretary of State of Delaware.

Certificates and Opinions

12. Certificate of the Secretary of the Company certifying as to the incumbency and signatures of the officers executing the principal documents and that attached thereto are true and complete copies of: (a) the Company's Certificate of Incorporation[3], (b) the Company's bylaws, (c) resolutions of the board of directors of the Company approving the transactions contemplated by the Purchase Agreement, (d) written consent of the stockholders of the Company approving the transactions contemplated by the Purchase Agreement and (e) the Merger Agreement.

13. Certificate of the Secretary of the Borrower certifying as to the incumbency and signatures of the officers executing the principal documents and that attached thereto are true and complete copies of: (a) the Borrower's Certificate of Incorporation, (b) the Borrower's bylaws, and (c) resolutions of the board of directors of the Borrower approving the transactions contemplated by the Purchase Agreement.

14. Certificate of Compliance executed by the Chief Executive Officer of the Company and certifying that, as of the date of the Closing and both before and after taking into account the effect of the Merger and the issuance and sale of the Notes and Warrants: (a) all of the conditions to closing have been satisfied, (b) all of the representations and warranties of the Company and the Borrower in the Purchase Agreement are true and correct or true and correct in all material respects with respect to representations and warranties that are not qualified as to materiality, (c) the Company and the Borrower have performed and complied with all of the agreements and conditions contained in the Purchase Agreement to be complied with thereby and (d) no Default or Event of Default exists.

15. Solvency Certificate executed by the Credit Parties' Chief Financial Officer certifying as to the solvency of each of the Credit Parties both before and after giving effect to the Merger and the sale and issuance of the Notes.

16. Legal opinion rendered by Simpson Thacher & Bartlett LLP, special counsel to the Company and the Borrower, in form and substance reasonably satisfactory to the Purchasers, relating to, among other things, the due authorization of Notes and the security interests granted under the Note Purchase Agreement.

17. Legal opinion rendered by Heller Ehrman LLP, special counsel to the Company, in form and substance reasonably satisfactory to the Purchasers, relating to, among other things, the due authorization of the Warrants.

18. Legal opinion rendered by the General Counsel to the Company, in form and substance reasonably satisfactory to the Purchasers, as to certain matters relating to the Purchase Agreement.

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[3] Amendment necessary to provide for new designated Series BB Preferred Stock to be issued upon exercise of the warrants and to increase the number of shares.

Other Documents and Deliveries

19. Post Closing Matters Agreement between the Borrower and the Collateral Agent.
20. Copy of Second Amended and Restated Investors' Rights Agreement.
21. Copy of Second Amended and Restated Right of First Refusal and Co-Sale Agreement.
22. Copy of Second Amended and Restated Voting Agreement.
23. Payoff and release letter executed by Silicon Valley Bank in respect of the outstanding Liens in favor thereof against the properties of the Borrower together with UCC III termination statement.
24. Financials of the Company for FYE 2004 (audited) and Ql of 2005 (unaudited) and also including pro forma for the Company on a consolidated basis after taking into account the closing of the Merger.
25. Copies of insurance certificates for the Credit Parties indicating that the collateral Agent is named as the loss payee and additional insured.

EXHIBIT 4.5

FORM OF SENIOR SECURED NOTE

THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272 AND 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. FOR INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTE, PLEASE CONTACT [NAME AND TITLE OF CONTACT PERSON] OF THE BORROWER AT [CONTACT PERSON'S PHONE NUMBER] OR [CONTACT PERSON'S ADDRESS].

THIS SENIOR SECURED PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, ACCORDINGLY, MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THIS SENIOR SECURED PROMISSORY NOTE AND RESTRICTING ITS TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE BORROWER AT ITS PRINCIPAL EXECUTIVE OFFICES.

TWIST MERGER SUB, INC.

15% Senior Secured Note due _____ __, 2011

No. _____ Date
$ _____

FOR VALUE RECEIVED, the undersigned, TWIST MERGER SUB, INC. (herein called the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to _____, or registered assigns, the principal sum of _____ DOLLARS on _____ __, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 15% per annum from the date hereof, payable quarterly in arrears, on the last day of March, June, September and December in each year, commencing with September 30, 2005, until the principal hereof shall have become due and payable; *provided*, *however*, interest on such unpaid balance shall accrue at the rate of 17% per annum during the continuance of any Event of Default.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at such place as the holder of this Note shall have designated by written notice to the Borrower as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Notes (herein called the "*Notes*") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005 (as from time to time amended, the "*Note Purchase Agreement*"), among the Borrower, Jazz Pharmaceuticals, Inc., LB I Group Inc., as Collateral Agent and a Purchaser, and the other Purchasers named therein and is entitled to the benefits thereof. This Note is secured pursuant to the provisions of the Note Purchase Agreement and other Related Documents (defined in the Note Purchase Agreement) and is entitled to the benefit of the rights and security provided

thereby. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in **Section 20** of the Note Purchase Agreement and (ii) to have made the representations set forth in **Section 6** of the Note Purchase Agreement.

As provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

To the fullest extent permitted by applicable law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the obligations or liabilities under the Note Purchase Agreement or evidenced hereby, (b) all rights to notice and hearing prior to the taking of possession or control of any collateral (including by way of attachment or replevy), and (c) the benefit of all valuation, appraisal and exemption laws.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

BORROWER ACKNOWLEDGES THAT THE BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS NOTE.

TWIST MERGER SUB, INC.

By _____
[Title]

EXHIBIT 4.6

FORM OF SERIES BB PREFERRED STOCK WARRANT

THE SECURITIES REPRESENTED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

THE SECURITIES REPRESENTED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT, ARE SUBJECT TO CERTAIN VOTING RESTRICTIONS PURSUANT TO A VOTING AGREEMENT RELATING TO SUCH SECURITIES, AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF SUCH AGREEMENT. A COPY OF SUCH VOTING AGREEMENT WILL BE FURNISHED TO THE REGISTERED HOLDER OF THIS WARRANT WITHOUT CHARGE UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THIS WARRANT OR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN RIGHT OF FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG THE HOLDER HEREOF, THE COMPANY AND CERTAIN HOLDERS OF SECURITIES OF THE COMPANY. A COPY OF SUCH AGREEMENT WILL BE FURNISHED TO THE REGISTERED HOLDER OF THIS WARRANT WITHOUT CHARGE UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

Warrant No.: BB-«warrantno»
Date of Issuance: June 24, 2005

Number of Shares: «shares»
(subject to adjustment)

JAZZ PHARMACEUTICALS, INC. WARRANT NO. BB-«warrantno»

Series BB Preferred Stock Warrant

This Warrant No. BB-«warrantno» (this "Warrant") of Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that «holder», the initial holder of this Warrant, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 6 below), up to «shares» shares of Series BB Preferred Stock of the Company ("Series BB Preferred Stock"), at a purchase price of $1.84 per share. This Warrant is one of a series of warrants to purchase in the aggregate 8,695,652 shares of Series BB Preferred Stock (collectively, the "Series BB Warrants") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated June 24, 2005, by and among the Company and the initial holders of the Series BB Warrants (the

"Purchase Agreement"). The shares purchasable upon exercise of this Warrant and the purchase price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Purchase Price," respectively.

1. **Exercise.**

(a) **Manner of Exercise.** This Warrant may be exercised by the Registered Holder, in whole or in part, by surrendering this Warrant, with the exercise form appended hereto as Exhibit A duly executed by such Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full of the Purchase Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise unless exercised pursuant to the Net Issue Exercise provisions of Section 1(c) below. The Purchase Price may be paid by cash, check, or wire transfer.

(b) **Effective Time of Exercise.** Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 1(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 1(d) below shall be deemed to have become the holder or holders of record of the Warrant Stock represented by such certificates.

(c) **Net Issue Exercise.**

(i) In lieu of exercising this Warrant in the manner provided above in Section 1(a), the Registered Holder may elect to receive shares equal to the value of this Warrant (or the portion of this Warrant being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election on the exercise form appended hereto as Exhibit A duly executed by such Registered Holder, in which event the Company shall issue to such Registered Holder a number of shares of Warrant Stock computed using the following formula:

$$X = \frac{Y\,(A - B)}{A}$$

Where X = The number of shares of Warrant Stock to be issued to the Registered Holder.

Y = The number of shares of Warrant Stock purchasable under this Warrant (at the date of such calculation).

A = The fair market value of one share of Warrant Stock (at the date of such calculation).

B = The Purchase Price (as adjusted through the date of such calculation).

(ii) For purposes of this Section 1(c), the fair market value of Warrant Stock on the date of calculation shall mean with respect to each share of Warrant Stock:

(A) if the Common Stock of the Company ("Common Stock") is traded on a securities exchange or The Nasdaq Stock Market, the fair market value shall be deemed to be the product of (x) the closing price on the date of calculation (or, if there are no sales for such date, then on the last date on which there were sales) and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible on such date; or

(B) if the Common Stock is actively traded over the counter, the fair market value shall be deemed to be the product of (x) the closing bid or sales price (whichever is applicable) on the date of calculation (or, if the date of calculation is not a trading day, the last trading day prior to the date of calculation) and (y) the number of shares of Common Stock into which each share of Warrant Stock is convertible on such date; or

(C) if neither (A) nor (B) is applicable, the fair market value of Warrant Stock shall be determined in good faith by the Company's Board of Directors.

(d) **Delivery to Registered Holder.** As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within ten (10) days thereafter, the Company at its expense will cause to be issued in the name of, and delivered to, the Registered Holder, or as such Registered Holder (upon payment by such Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of shares of Warrant Stock to which such Registered Holder shall be entitled, and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock equal (without giving effect to any adjustment therein) to the number of such shares called for on the face of this Warrant minus the number of such shares purchased by the Registered Holder upon such exercise as provided in Section 1(a) or 1(c) above.

2. **Adjustments.**

(a) **Redemption or Conversion of Preferred Stock.** If all of the Series BB Preferred Stock is redeemed or converted into shares of Common Stock (including without limitation pursuant to the automatic conversion provisions of the Company's certificate of incorporation providing for the conversion of the Series BB Preferred Stock into Common Stock in connection with a qualified initial public offering of the Company's securities), then this Warrant shall automatically become exercisable for that number of shares of Common Stock equal to the number of shares of Common Stock that would have been received if this Warrant had been exercised in full and the shares of Series BB Preferred Stock received thereupon had been simultaneously converted into shares of Common Stock immediately prior to such event, and the Purchase Price shall be automatically adjusted to equal the amount obtained by multiplying the then existing Purchase Price by a fraction, (i) the numerator of which shall be the

aggregate Purchase Price of the shares of Series BB Preferred Stock for which this Warrant was exercisable immediately prior to such redemption or conversion, and (ii) the denominator of which shall be the number of shares of Common Stock for which this Warrant is exercisable immediately after such redemption or conversion.

(b) **Stock Splits and Dividends.** If the outstanding shares of Warrant Stock shall be subdivided into a greater number of shares or a dividend in Warrant Stock shall be paid in respect of Warrant Stock, the Purchase Price in effect immediately prior to such subdivision or at the record date of such dividend shall simultaneously with the effectiveness of such subdivision or immediately after the record date of such dividend be proportionately reduced. If outstanding shares of Warrant Stock shall be combined into a smaller number of shares, the Purchase Price in effect immediately prior to such combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Purchase Price, the number of shares of Warrant Stock purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Purchase Price in effect immediately prior to such adjustment, by (ii) the Purchase Price in effect immediately after such adjustment.

(c) **Reclassification, Etc.** In case there occurs any reclassification or change of the outstanding securities of the Company or of any reorganization of the Company (or any other corporation the stock or securities of which are at the time receivable upon the exercise of this Warrant) or any similar corporate reorganization on or after the date hereof, then and in each such case the Registered Holder, upon the exercise hereof at any time after the consummation of such reclassification, change, or reorganization, shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which such Registered Holder would have been entitled upon such consummation if such Registered Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment pursuant to the provisions of this Section 2.

(d) **Adjustment Certificate.** When any adjustment is required to be made in the Warrant Stock or the Purchase Price pursuant to this Section 2, the Company shall promptly mail to the Registered Holder a certificate setting forth (i) a brief statement of the facts requiring such adjustment, (ii) the Purchase Price after such adjustment and (iii) the kind and amount of stock or other securities or property into which this Warrant shall be exercisable after such adjustment.

3. **Transfers.**

(a) **Unregistered Security.** Each holder of this Warrant acknowledges that this Warrant, the Warrant Stock and the Common Stock issuable upon conversion of the Warrant Stock have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and agrees that in no event will it dispose of all or any portion of this Warrant, the Warrant Stock or the Common Stock issuable upon conversion of the Warrant Stock unless and until (a) it has complied with the provisions of Section 3(b) below, and (b) if reasonably requested by the Company, the Registered Holder shall have furnished the Company with an opinion of counsel

reasonably satisfactory in form and substance to the Company and the Company's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken. Without limiting the foregoing, the Registered Holder, by accepting this Warrant, agrees that it may transfer this Warrant (or any portion hereof) only to one of its Affiliates (as defined in the Purchase Agreement) or to any other person or entity that is acceptable to the Company, provided that, in the case of any transfer, the applicable transferee must agree in writing to be subject to the terms of this Warrant, the Investor Rights Agreement, the First Refusal and Co-Sale Agreement and the Voting Agreement (as such terms are defined below); provided, however, that, except with respect to transfers to its Affiliates, the Registered Holder hereby covenants not to effect such transfer if such transfer either would invalidate the securities laws exemptions pursuant to which this Warrant was originally offered and sold or would itself require registration and/or qualification under the Securities Act or applicable state securities laws. Each certificate evidencing this Warrant transferred as provided above shall bear an appropriate restrictive legend substantially to the foregoing effect.

For purposes of this Warrant, (i) "Investor Rights Agreement" means that certain Second Amended and Restated Investor Rights Agreement, dated as of June 24, 2005, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of warrants to purchase Series BB Preferred Stock (and any shares issued upon exercise of such warrants) and certain holders of the Common Stock, (ii) "First Refusal and Co-Sale Agreement" means that certain Second Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of June 24, 2005, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of Series BB Preferred Stock and the holders of warrants to purchase Series BB Preferred Stock (and any shares issued upon exercise of such warrants) and the persons identified as "Executives" therein and (iii) "Voting Agreement" means that certain Second Amended and Restated Voting Agreement, dated as of June 24, 2005, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of Series BB Preferred Stock and the holders of warrants to purchase Series BB Preferred Stock (and any shares issued upon exercise of such warrants) and certain holders of the Common Stock.

(b) **Transferability.** Subject to the provisions of this Section 3 and the provisions of Section 5, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment in the form of Exhibit B hereto at the principal office of the Company. Any purported transfer of all or any portion of this Warrant in violation of the provisions of this Warrant shall be null and void.

(c) **Warrant Register.** The Company will maintain a register containing the names and addresses of the Registered Holders of this Warrant and all other warrants to purchase Series BB Preferred Stock. Until any transfer of this Warrant is made in the warrant register, the Company may treat the Registered Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary. Any Registered Holder may change such Registered Holder's address as shown on the warrant register by written notice to the Company requesting such change.

4. **Representations and Warranties of the Registered Holder.** The Registered Holder hereby represents and warrants to the Company that:

(a) **Authorization.** The Registered Holder has full power and authority to enter into, and perform its obligations under, this Warrant. This Warrant, when executed and delivered by the Registered Holder, will constitute a valid and legally binding obligation of the Registered Holder, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) **Purchase Entirely for Own Account.** This Warrant is issued to the Registered Holder in reliance upon the Registered Holder's representation to the Company, which by the Registered Holder's acceptance of this Warrant, the Registered Holder hereby confirms, that the Warrant to be acquired by the Registered Holder, the Warrant Stock and the Common Stock to be issued upon the conversion of the Warrant Stock (collectively, the "Securities") will be acquired for investment for the Registered Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Registered Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. By accepting this Warrant, the Registered Holder further represents that the Registered Holder does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities. The Registered Holder has not been formed for the specific purpose of acquiring the Securities.

(c) **Disclosure of Information.** The Registered Holder has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Securities with the Company's management and has had an opportunity to review the Company's facilities. The Registered Holder understands that such discussions, as well as any written information delivered by the Company to the Registered Holder, were intended to describe the aspects of the Company's business which it believes to be material.

(d) **Restricted Securities.** The Registered Holder understands that the Securities have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Registered Holder's representations as expressed herein. The Registered Holder understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Registered Holder must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Registered Holder acknowledges that the Company has no obligation to register or qualify

the Securities for resale. The Registered Holder further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Registered Holder's control, and which the Company is under no obligation and may not be able to satisfy.

(e) **No Public Market.** The Registered Holder understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for the Securities.

(f) **Accredited Investor.** The Registered Holder is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

5. **Market Standoff.**

(a) **Market Standoff.** The Registered Holder hereby agrees that, if so requested by the Company and the Underwriter's Representative (as defined below), if any, the Registered Holder shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of this Warrant or other securities of the Company ("Market Standoff") without the prior written consent of the Company and the Underwriter's Representative for such period of time (a) not to exceed one hundred eighty (180) days following the effective date of a Registration Statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Registered Holder of a proposed follow-on offering and ending 90 days after the effective date of the Registration Statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that the Registered Holder shall not be required to agree to a Market Standoff for a period of time that commences less than thirty (30) days after the expiration of another period of time during which the Registered Holder has agreed to a Market Standoff. The obligations of the Registered Holder under this Section 5 shall be conditioned upon similar agreements being in effect with each other stockholder of the Company who is an officer, or director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering. For purposes of this Warrant, the "Underwriter's Representative" is the representative the underwriter or underwriters selected for the underwriting of a public offering of the Company's securities.

(b) **Stop-Transfer Instructions.** In order to enforce the covenants set forth in Section 3 and Section 5(a), the Company may impose stop-transfer instructions with respect to the securities of the Registered Holder (and the securities of every other person subject to the restrictions in Section 3 and Section 5(a)).

6. **Termination.** This Warrant (and the right to purchase securities upon exercise hereof) shall terminate on June 24, 2012 (the "Expiration Date").

7. **Notices of Certain Transactions.** In the event that the Company shall propose at any time to:

(a) declare any dividend or distribution upon the Common Stock, whether in cash, property, stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) effect any reclassification or recapitalization of the Common Stock or Preferred Stock outstanding involving a change in the Common Stock or Preferred Stock;

(d) merge or consolidate with or into any other partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature; or

(e) sell, lease, or convey all or substantially all its assets, property or business, or to liquidate, dissolve, or wind up or otherwise consummate a Liquidation Event (as defined in the Company's Second Amended and Restated Certificate of Incorporation); then, in connection with each such event, the Company shall send to the Registered Holder (in accordance with the provisions of Section 23):

(i) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock and/or Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c), (d) and (e) above; and

(ii) in the case of the matters referred to in (c), (d) and (e) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock and/or Preferred Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

8. **Reservation of Stock.** The Company will at all times reserve and keep available, solely for the issuance and delivery upon the exercise of this Warrant, such shares of Warrant Stock (and Common Stock issuable upon conversion of the Warrant Stock) and other stock, securities and property, as from time to time shall be issuable upon the exercise of this Warrant.

9. **Exchange of Warrants.** Upon the surrender by the Registered Holder of any Warrant or Warrants, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 3 hereof, issue and deliver to or upon the order of such Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of such Registered Holder, calling in the aggregate on the face or faces thereof for the number of shares of Series BB Preferred Stock called for on the face or faces of the Warrant or Warrants so surrendered.

10. **Replacement of Warrants.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

11. **No Rights as Stockholder.** Until the exercise of this Warrant, the Registered Holder of this Warrant shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

12. **Additional Rights.** Upon exercise of this Warrant, the Registered Holder shall have and be entitled to exercise the rights granted to the signatories who are holders of Series BB Preferred Stock under each of (a) the Voting Agreement, (b) the First Refusal and Co-Sale Agreement and (c) the Investor Rights Agreement. By its receipt of this Warrant, the Registered Holder agrees to be bound by the Voting Agreement, the First Refusal and Co-Sale Agreement and the Investor Rights Agreement.

13. **No Fractional Shares.** No fractional shares of Series BB Preferred Stock will be issued in connection with any exercise hereunder. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Series BB Preferred Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

14. **Amendment or Waiver.** Any term of the Series BB Warrants may be amended or waived only by an instrument in writing signed by the Company and the holders of Series BB Warrants covering at least sixty-five percent (65%) of the number of shares of Series BB Preferred Stock subject to Series BB Warrants outstanding at the time of such amendment or waiver.

15. **Headings.** The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

16. **Governing Law.** This Warrant shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

17. **Survival of Representations.** Unless otherwise set forth in this Warrant, the warranties, representations and covenants of the Company and the Purchasers contained in or made pursuant to this Warrant shall survive the execution and delivery of this Warrant.

18. **Transfer; Successors and Assigns.** The terms and conditions of this Warrant shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the

parties provided that they have complied with the terms and conditions herein. Nothing in this Warrant, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Warrant, except as expressly provided in this Warrant.

19. **Counterparts.** This Warrant may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

20. **Attorney's Fees.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of this Warrant, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

21. **Severability.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Warrant, (b) the balance of this Warrant shall be interpreted as if such provision were so excluded and (c) the balance of this Warrant shall be enforceable in accordance with its terms.

22. **Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Warrant, upon any breach or default of any other party under this Warrant, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Warrant, or any waiver on the part of any party of any provisions or conditions of this Warrant, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Warrant or by law or otherwise afforded to any party, shall be cumulative and not alternative.

23. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Registered Holder shall be sent to the address as set forth on the signature page of this Warrant or at such other address as the Registered Holder may designate pursuant to Section 3(c) by ten (10) days' advance notice to the Company.

24. **Entire Agreement.** This Warrant and the documents and agreements referred to herein (including the Company's Second Amended and Restated Certificate of Incorporation, Investor Rights Agreement, the First Refusal and Co-Sale Agreement and the Voting Agreement) constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements relating to the subject matter hereof existing between the parties hereto are expressly canceled.

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____
Address: 3180 Porter Drive
Palo Alto, CA 94304

Fax Number: (650) 496-3781

Accepted and Agreed:

REGISTERED HOLDER

«HOLDER»

By: _____
Name: _____
Title: _____

Address:
«address»

[Signature Page to Series BB Preferred Stock Warrant]

EXHIBIT A

EXERCISE FORM

To: Jazz Pharmaceuticals, Inc. Dated: _____

The undersigned, pursuant to the provisions set forth in the attached Warrant No. BB-«warrantno», hereby irrevocably elects to (a) purchase _____ shares of Series BB Preferred Stock covered by such Warrant and herewith makes payment of $_____, representing the full purchase price for such shares at the price per share provided for in such Warrant, or (b) exercise such Warrant for _____ shares purchasable under the Warrant pursuant to the Net Issue Exercise provisions of Section 1(c) of the Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 4 of the Warrant and by its signature below hereby makes such representations and warranties to the Company as of the date hereof.

By: _____
Name: _____
Title: _____
Name of Entity: _____

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned transferor under the attached Warrant with respect to the number of shares of Series BB Preferred Stock covered thereby set forth below, unto:

Name of Assignee	Address/Fax Number	No. of Shares

The undersigned transferor represents that it has complied with all of the provisions of the attached Warrant governing the transfer of such Warrant, including without limitation the provisions of Section 3 thereof, and acknowledges that any purported transfer of all or any part of such Warrant in violation of the terms of the attached Warrant shall be null and void.

Dated: _____ By: _____
Name: _____
Title: _____

The undersigned transferee of the attached Warrant acknowledges the limitations on transfer of the attached Warrant, including without limitation those contained in Section 3 thereof, agrees to be bound by the terms of the attached Warrant and the Investor Rights Agreement, the Right of First Refusal and Co-Sale Agreement and the Voting Agreement (each as defined in the attached Warrant) to the same extent as if the undersigned transferee were the initial holder of the attached Warrant, and shall deliver to the Company together with this assignment form counterpart signature pages to the Investor Rights Agreement, the Right of First Refusal and Co-Sale Agreement and the Voting Agreement.

Dated: _____ By: _____
Name: _____
Title: _____

Exhibit 10.1

INDEMNIFICATION AGREEMENT

AGREEMENT, made this ____ day of _____, 2007, between Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and (the "Indemnitee").

W I T N E S S E T H:

WHEREAS, the Indemnitee is a director and/or officer of the Company.

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, in recognition of Indemnitee's need for substantial protection against personal liability in order to enhance Indemnitee's continued service to the Company in an effective manner and Indemnitee's reliance on the provisions of the Company's Certificate of Incorporation ("Certificate of Incorporation") and the Company's Bylaws (the "Bylaws") requiring indemnification of the Indemnitee to the fullest extent permitted by law, and in part to provide Indemnitee with specific contractual assurance that the protection promised by such Certificate of Incorporation and Bylaws will be available to Indemnitee (regardless of, among other things, any amendment to or revocation of such Certificate of Incorporation or Bylaws or any change in the composition of the Company's Board of Directors or acquisition transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of and the advancing of expenses to Indemnitee to the fullest extent (whether partial or complete) permitted by law and as set forth in this Agreement.

[WHEREAS, the Company and Indemnitee entered into an Indemnification Agreement dated _____, 2003 (the "Prior Indemnification Agreement"), at which time the Company was a California corporation.]

[WHEREAS, the Company subsequently reincorporated in the State of Delaware.]

WHEREAS, the Certificate of Incorporation, the Bylaws and the General Corporation Law of the State of Delaware ("DGCL") expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and Bylaws and any resolutions adopted pursuant thereto and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

[WHEREAS, the Company and Indemnitee desire to supersede and replace the Prior Indemnification Agreement with this Agreement.]

NOW, THEREFORE, in consideration of the premises and of Indemnitee agreeing to serve or continuing to serve the Company directly or, at its request, with another enterprise, and intending to be legally bound hereby, the parties hereto agree as follows:

Section 1. Basis Indemnification Agreement. (a) In the event Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Claim (as defined in Section 9(b) herein) by reason of (or arising in part out of) an Indemnifiable Event (as defined in Section 9(d) herein), the Company shall indemnify Indemnitee (including its respective directors, officers, partners, members, employees and agents, as applicable) and each person who controls any of them or who may be liable within the meaning of Section 15 the Securities Act of 1933, as amended (the "Securities Act") or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to the fullest extent permitted by law as soon as practicable but in any event no later than 30 days after written demand is presented to the Company, against any and all Expenses (as defined in Section 9(c) herein), judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection therewith) of such Claim actually and reasonably incurred by or on behalf of Indemnitee in connection with such Claim and any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement. If requested by Indemnitee in writing, the Company shall advance (within ten business days of such written request) any and all Expenses to Indemnitee (an "Expense Advance"). Notwithstanding anything in this Agreement to the contrary, and except as provided in Section 3, prior to a Change of Control (as defined in Section 9(a) herein), Indemnitee shall not be entitled to indemnification pursuant to this Agreement in connection with any Claim (i) initiated by Indemnitee against the Company or any director or officer of the Company unless the Company has joined in or consented to the initiation of such Claim, or (ii) made on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) Notwithstanding the foregoing, (i) the indemnification obligations of the Company under Section 1(a) shall be subject to the condition that the Reviewing Party shall not have determined (in a written opinion, in any case in which the special independent counsel referred to in Section 2 hereof is involved) that Indemnitee would not be permitted to be indemnified under applicable law, and (ii) the obligation of the Company to make an Expense Advance pursuant to Section 1(a) shall be subject to the condition that the Company receives an undertaking that, if, when and to the extent that the Reviewing Party determines that Indemnitee would not be permitted to be so indemnified under applicable law, the Company shall be entitled

to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; provided, however, that if Indemnitee has commenced legal proceedings in the Court of Chancery of the State of Delaware (the "Delaware Court") to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by the Reviewing Party that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for Expense Advances shall be unsecured and no interest shall be charged thereon. If there has not been a Change in Control, the Reviewing Party shall be selected by the Board of Directors, and if there has been such a Change in Control, the Reviewing Party shall be the special independent counsel referred to in Section 2 hereof. If there has been no determination by the Reviewing Party or if the Reviewing Party determines that Indemnitee substantively would not be permitted to be indemnified in whole or in part under applicable law, Indemnitee shall have the right to commence litigation in the Delaware Court seeking an initial determination by the court or challenging any such determination by the Reviewing Party or any aspect thereof and the Company hereby consents to service of process and to appear in any such proceeding. Any determination by the Reviewing Party otherwise shall be conclusive and binding on the Company and Indemnitee.

Section 2. Change in Control. The Company agrees that if there is a Change in Control of the Company (other than a Change in Control which has been approved by two- thirds or more of the Company's Board of Directors who were directors immediately prior to such Change in Control) then with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnity payments and Expense Advances under this Agreement or any other agreement, the Bylaws or Certificate of Incorporation now or hereafter in effect relating to Claims for Indemnifiable Events, the Company shall seek legal advice only from special independent counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld or delayed) and who has not otherwise performed services for the Company within the last five years (other than in connection with such matters) or for Indemnitee. In the event that Indemnitee and the Company are unable to agree on the selection of the special independent counsel, such special independent counsel shall be selected by lot from among at least five law firms with offices in the State of Delaware having more than fifty attorneys, having a rating of "av" or better in the then current Martindale Hubbell Law Directory and having attorneys which specialize in corporate law. Such selection shall be made in the presence of Indemnitee (and his legal counsel or either of them, as Indemnitee may elect). Such counsel, among other things, shall, within 90 days of its retention, render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the special independent counsel referred to above and to fully indemnify such counsel against any and all expenses (including attorneys' fees), claims, liabilities, and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

Section 3. Indemnification for Additional Expenses. The Company shall indemnify Indemnitee against any and all expenses (including attorneys' fees) and, if requested by Indemnitee in writing, shall (within ten business days of such written request) advance such

expenses to Indemnitee, which are incurred by Indemnitee in connection with any Claim asserted against or action brought by Indemnitee for (i) indemnification or advance payment of Expenses by the Company under this Agreement or any other agreement, the Bylaws or Certificate of Incorporation now or hereafter in effect relating to Claims for Indemnifiable Events and/or (ii) recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance expense payment or insurance recovery, as the case may be. The Indemnitee shall qualify for advances solely upon the execution and delivery to the Company of an undertaking providing that the Indemnitee undertakes to repay the advance to the extent that it is ultimately determined that the Indemnitee is not entitled to be indemnified by the Company.

Section 4. Partial Indemnity, Etc. If Indemnitee is entitled under any provisions of this Agreement to indemnification by the Company of some or a portion of the Expenses, liabilities, judgments, fines, penalties and amounts paid in settlement of a Claim but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any or all Claims relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, including dismissal without prejudice, Indemnitee shall be indemnified against all Expenses incurred in connection therewith. In connection with any determination by the Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

Section 5. No Presumption. For purposes of this Agreement, the termination of any action, suit or proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief.

Section 6. Notification and Defense of Claim. Within 30 days after receipt by Indemnitee of notice of the commencement of a Claim which may involve an Indemnifiable Event, Indemnitee will, if a claim in respect thereof is to be made against the Company under this Agreement, submit to the Company a written notice identifying the proceeding, but the omission so to notify the Company will not relieve it from any liability which it may have to Indemnitee under this Agreement unless the Company is materially prejudiced by such lack of notice. With respect to any such Claim as to which Indemnitee notifies the Company of the commencement thereof:

(a) the Company will be entitled to participate therein at its own expense;

(b) except as otherwise provided below, to the extent that it may wish, the Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense thereof, the Company will not be liable to Indemnitee under this Agreement for any legal or other expenses subsequently incurred by

Indemnitee in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own counsel in such action, suit or proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Company, (ii) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense of such action, or (iii) the Company shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any claim brought by or on behalf of the Company or as to which Indemnitee shall have made the conclusion provided for in clause (ii) above; and

(c) the Company shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent. The Company shall not settle any action or claim in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Company nor Indemnitee will unreasonably withhold or delay their consent to any proposed settlement.

Section 7. Non-exclusivity, Etc. The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the Certificate of Incorporation, the Bylaws, the DGCL, any agreement, a vote of the stockholders, a resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee acting on behalf of the Company and at the request of the Company prior to such amendment, alteration or repeal. To the extent that a change in the DGCL (whether by statute or judicial decision), the Certificate of Incorporation or the Bylaws permits greater indemnification by agreement than would be afforded currently under the Certificate of Incorporation, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. Notwithstanding anything to the contrary herein, the indemnification provided under this agreement shall continue as to the Indemnitee for any action the Indemnitee took or did not take while serving in an indemnified capacity even though the Indemnitee may have ceased to serve in such capacity.

Section 8. Liability Insurance. To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any Company director or officer. If, at the time the Company receives notice from any source of a Claim as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance

in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Claim in accordance with the terms of such policies.

Section 9. Certain Definitions.

(a) Change in Control: shall be deemed to have occurred if:

(i) before the Company has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"):

(A) the Company, or any material subsidiary of the Company, is merged, consolidated or reorganized into or with another corporation or other legal person (an "Acquiring Person") or securities of the Company are exchanged for securities of an Acquiring Person, and as a result of such merger, consolidation, reorganization or exchange less than a majority of the combined voting power of the then outstanding securities of the Acquiring Person immediately after such transaction are held, directly or indirectly, in the aggregate by the holders of Voting Securities immediately prior to such transaction;

(B) the Company, or any material subsidiary of the Company, in any transaction or series of related transactions, sells or otherwise transfers all or substantially all of its assets to an Acquiring Person, and less than a majority of the combined voting power of the then outstanding securities of the Acquiring Person immediately after such sale or transfer are held, directly or indirectly, in the aggregate by the holders of Voting Securities immediately prior to such sale or transfer;

(C) during any period of two consecutive years, individuals who at the beginning of any such period constitute the directors of the Company cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the Company's stockholders, of each director of the Company first elected during such period was approved by a unanimous vote of the directors of the Company then still in office who were directors of the Company at the beginning of any such period;

(D) the Company and its subsidiaries, in any transaction or series of related transactions, sells or otherwise transfers business operations that generated two thirds or more of the consolidated revenues (determined on the basis of the Company's four most recently completed fiscal quarters) of the Company and its subsidiaries immediately prior thereto; or

(E) any other transaction or series of related transactions occur that have substantially the effect of the transactions specified in any of the preceding clauses in this paragraph (i); or

(ii) after the Company has a class of securities registered under Section 12 of the Exchange Act:

(A) any person, as that term is used in Section 13(d) and Section 14(d)(2) of the Exchange Act, becomes, is discovered to be, or files a report on Schedule 13D or 14D-1 (or any successor schedule, form or report) disclosing that such person is a beneficial owner (as defined in Rule 13d-3 under the Exchange Act or any successor rule or regulation), directly or indirectly, of securities of the Company representing 20% or more of the total voting power of the Company's then outstanding Voting Securities (unless such person becomes such a beneficial owner in connection with the initial public offering of the Company);

(B) individuals who, as of the consummation date of the Company's initial public offering, constitute the Board of Directors of the Company cease for any reason to constitute at least a majority of the Board of Directors of the Company, unless any such change is approved by a unanimous vote of the members of the Board of Directors of the Company in office immediately prior to such cessation;

(C) the Company, or any material subsidiary of the Company, is merged, consolidated or reorganized into or with an Acquiring Person or securities of the Company are exchanged for securities of an Acquiring Person, and immediately after such merger, consolidation, reorganization or exchange less than a majority of the combined voting power of the then outstanding securities of the Acquiring Person immediately after such transaction are held, directly or indirectly, in the aggregate by the holders of Voting Securities immediately prior to such transaction;

(D) the Company, or any material subsidiary of the Company, in any transaction or series of related transactions, sells or otherwise transfers all or substantially all of its assets to an Acquiring Person, and less than a majority of the combined voting power of the then outstanding securities of the Acquiring Person immediately after such sale or transfer is held, directly or indirectly, in the aggregate by the holders of Voting Securities immediately prior to such sale or transfer;

(E) the Company and its subsidiaries, in any transaction or series of related transactions, sells or otherwise transfers business operations that generated two thirds or more of the consolidated revenues (determined on the basis of the Company's four most recently completed fiscal quarters) of the Company and its subsidiaries immediately prior thereto;

(F) the Company files a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing that a change in control of the Company has or may have occurred or will or may occur in the future pursuant to any then existing contract or transaction; or

(G) any other transaction or series of related transactions occur that have substantially the effect of the transactions specified in any of the preceding clauses in this paragraph (ii).

Notwithstanding the provisions of Section 9(a)(ii)(A) or 9(a)(ii)(D), unless otherwise determined in a specific case by majority vote of the Board of Directors of the Company, a Change of Control shall not be deemed to have occurred for purposes of this Agreement solely because (i) the Company, (ii) an entity in which the Company directly or indirectly beneficially owns 50% or more of the voting securities or (iii) any Company sponsored employee stock ownership plan, or any other employee benefit plan of the Company, either files or becomes obligated to file a report or a proxy statement under or in response to Schedule 13D, Schedule 14D-1, Form 8-K or Schedule 14A (or any successor schedule, form or report or item therein) under the Exchange Act, disclosing beneficial ownership by it of shares of stock of the Company, or because the Company reports that a Change in Control of the Company has or may have occurred or will or may occur in the future by reason of such beneficial ownership.

(b) Claim: any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any inquiry, hearing or investigation whether conducted by the Company or any other party, whether civil, criminal, administrative, investigative or other.

(c) Expenses: include attorneys' fees and all other costs, fees, expenses and obligations of any nature whatsoever paid or incurred in connection with investigating, defending, being a witness in or participating in (including appeal), or preparing to defend, be a witness in or participate in any Claim relating to any Indemnifiable Event.

(d) Indemnifiable Event: any event or occurrence (whether before or after the date hereof) related to the fact that Indemnitee is or was a director, officer, employee, consultant,

agent or fiduciary of or to the Company, or is or was serving at the request of the Board of Directors as a director, officer, employee, trustee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, or by reason of anything done or not done by Indemnitee in any such capacity including, without limitation, any claim or investigation under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise on which relate directly to indirectly to the registration, purchase, sale or ownership of any securities of the Company or to any fiduciary obligation owed with respect thereto or as a direct or indirect result of any claim made by any stockholder of the Company against Indemnitee and arising out of or related to any round of financing of the Company (including but not limited to claims regarding non-participation, or non-pro rata participation, in such round by such stockholder), or made by a third party against Indemnitee based on any misstatement or omission of a material fact by the Company in violation of any duty of disclosure imposed on the Company by federal or state securities or common laws.

(e) Reviewing Party: (i) the Company's Board of Directors (provided that a majority of directors are not parties to the particular Claim for which Indemnitee is seeking indemnification) or (ii) any other person or body appointed by the Company's Board of Directors, who is not a party to the particular Claim for which Indemnitee is seeking indemnification, or (iii) if there has been a Change in Control, the special independent counsel referred to in Section 2 hereof.

(f) Voting Securities: any securities of the Company which vote generally in the election of directors.

Section 10. Amendments, Termination and Waiver. No supplement, modification, amendment or termination of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 11. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

Section 12. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under insurance policy, Certificate of Incorporation or otherwise) of the amounts otherwise indemnifiable hereunder.

Section 13. Attorneys' Fees. In the event that any action is instituted by the Indemnitee under this Agreement or under any liability insurance policies maintained by the Company to enforce or interpret any of the terms hereof or thereof, the Indemnitee shall be

entitled to be paid all Expenses incurred by the Indemnitee with respect to such action if the Indemnitee is ultimately successful in such action. In the event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, the Indemnitee shall be entitled to be paid Expenses incurred by the Indemnitee in defense of such action (including costs and expenses incurred with respect to Indemnitee counterclaims and cross-claims made in such action), and shall be entitled to the advancement of Expenses with respect to such action, in each case only to the extent that the Indemnitee is ultimately successful in such action.

Section 14. Binding Effect, Etc. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouse, heirs, and personal and legal representatives. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director or officer (or in one of the capacities enumerated in Section 9(d) hereof) of the Company or of any other enterprise at the Board of Director's request.

Section 15. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 16. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, irrevocably, to the extent such party is not a resident of the State of Delaware, National Corporate Research, Ltd., 615 South Dupont Highway, City of Dover, County of Kent, Delaware 19901 as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 17. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 18. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes and replaces any and all prior negotiations, correspondence, understandings and agreements, including without limitation the Prior Indemnification Agreement, between the parties regarding the subject matter hereof.

Executed this ___ day of _____, 2007.

Jazz Pharmaceuticals, Inc.

By: _____
Its:

[Indemnitee]

_____

EXHIBIT 10.2

EMPLOYMENT AGREEMENT

BY AND BETWEEN

JAZZ PHARMACEUTICALS, INC.

AND

BRUCE C. COZADD

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EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is made and entered into on February 18, 2004, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and BRUCE C. COZADD (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an offer letter, dated April 1, 2003, as amended (the "***Offer Letter***").

B. In connection with the Company's sale of Series A Preferred Stock to investors, the Executive and the Company entered into the Stock Restriction Agreement, dated April 30, 2003, as amended (the "***Stock Restriction Agreement***").

C. The Executive and the Company entered into the Common Stock Purchase Agreement, dated October 30, 2003 (the "***Stock Purchase Agreement***" and, together with the Stock Restriction Agreement, the "***Stock Agreements***")

D. Certain parties are now proposing to purchase shares of the Company's Series B Preferred Stock and Series B Prime Preferred Stock.

E. The Company and the Executive wish to enter into this Agreement in order to (i) amend and restate the terms and conditions of the Company's retention of the Executive's services and (ii) amend and restate the terms and conditions of certain restrictions on the capital stock of the Company held by the Executive.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. ***Integration.***

This Agreement and the Transactional Agreements constitute the entire agreement between the Company and the Executive regarding the subject matter hereof and thereof and supersede and replace any and all prior oral and written negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof and thereof; provided, however, the Offer Letter, the Stock Agreements, and the Employee Confidential Information and Inventions Agreement between the Company and the Executive shall remain in full force and effect. To the extent this Agreement conflicts with the Offer Letter or the Stock Agreements, this Agreement controls. To the extent this Agreement conflicts with the Employee Confidential

Information and Inventions Agreement, the Employee Confidential Information and Inventions Agreement controls. To the extent this Agreement conflicts with the terms of the Company's employee handbook in effect from time to time, this Agreement controls. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the Preferred Stock Purchase Agreement (the "***Purchase Agreement***") dated January 27, 2004 among the Company and other parties identified therein, the Amended and Restated Investor Rights Agreement (the "***Investor Rights Agreement***") of even date herewith among the Company and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement (the "***Right of First Refusal Agreement***") of even date herewith among the Company and the parties identified therein, and the Amended and Restated Voting Agreement (the "***Voting Agreement***") of even date herewith among the Company and the parties identified therein, each as may be amended in accordance with its terms.

2. ***Definitions.***

For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person.

2.2. "***Annual Bonus Rate for the Termination Year***" shall mean:

2.2.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.2.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the year in which the termination occurs times the Executive's target bonus percentage for the year in which the termination occurs.

2.3. "***Annual Bonus Rate for the Reference Year***" shall mean:

2.3.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.3.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the Reference Year times the Executive's target bonus percentage for the year in which the termination occurs.

2.4. "***Call***" shall mean the right of the Company to buy Vested Shares pursuant to Section 9.4.

2.5. "***Cause***" shall mean the occurrence of any of the following events:

2.5.1. the Executive's willful misconduct or gross negligence that is materially injurious to the Company;

2.5.2. the Executive's conviction or plea of guilty or nolo contendere to any felony or crime involving moral turpitude;

2.5.3. the Executive's commission of any act of fraud with respect to the Company;

2.5.4. the Executive's willful violation of any federal or state securities law; or

2.5.5. the Executive's willful and continued failure to perform the Executive's job duties after 30 days' written notice from the Board setting forth in detail the specific respects in which it believes the Executive has willfully and not substantially performed such job duties and a failure by Executive to cure within such 30-day period if capable of being cured.

2.6. ***"Change of Control"*** means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

2.7. "***Change of Control Severance***" shall mean:

2.7.1. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary in effect at the time of termination times (b) the number of months included in the Severance Period, subject to standard deductions and withholdings;

2.7.2. an amount, payable in one lump sum at the time of termination, equal to the product of the Executive's Bonus Rate times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination;

2.7.3. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary as in effect at the time of termination times (b) the Executive's Bonus Rate times (c) the number of months included in the Severance Period, subject to standard deductions and withholdings; and

2.7.4. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment.

2.8. "***Common Shares***" shall mean the shares of Common Stock that the Executive now owns or hereafter acquires from the Company.

2.9. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance then in force covering employees of the Company. In the event the Company has no policy of disability income insurance in force covering employees of the Company, the term "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board and the Executive, determines to have incapacitated the Executive from performing all of the Executive's usual services for the Company for a period of at least 120 days during any 12 month period (whether or not consecutive) and is expected to continue to incapacitate the Executive thereafter. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

2.10. *"**Executive's Bonus Rate**"* shall mean:

2.10.1. if the Executive has not previously received an annual bonus, the target bonus percentage for the year in which the termination occurs;

2.10.2. if the Executive has previously received one annual bonus payment at the time of termination, that percentage calculated by dividing the annual bonus actually paid for the year to which the bonus relates by the salary actually paid for such year; or

2.10.3. if the Executive has received more than one annual bonus payment at the time of termination, the average over the prior two years of the percentage calculated by dividing the bonus actually paid for the year to which the bonus relates by the salary actually paid for such year.

2.11. "***Fair Market Value***" shall mean the value of the Shares determined in good faith by the Board of Directors, provided that (a)(i) if the Shares are listed on any established stock exchange or a national market system, their fair market value shall be the average of the closing sales price for the Shares as quoted on such system or exchange (or the largest such exchange) over the 5-trading-day period ending immediately prior to the date of the Notice of Put/Call Exercise, as reported in the Wall Street Journal or similar publication, and (ii) if the Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for the Shares on the date of the Notice of Put/Call Exercise (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices), and (b) if clauses (a)(i) or (a)(ii) are not applicable, the Board of Directors shall apply valuation techniques generally used by reputable investment bankers (without giving effect to any premium that might be paid by a strategic buyer in an acquisition) to determine the value of the Shares as of the date of the Notice of Put/Call Exercise.

2.12. "***Founder Shares***" shall mean shares of Common Stock that the Executive owns immediately prior to the Initial Closing (as defined in the Purchase Agreement).

2.13. "***Good Reason***" shall mean the occurrence of any of the following events without the Executive's written consent:

2.13.1. a substantial diminution by the Company in the nature or status of the Employee's responsibilities or an adverse change in title or reporting level as they exist on the date of this Agreement, or the addition of responsibilities of a nature or status inconsistent with the office of Executive Chairman of a company such as the Company;

2.13.2. the relocation of the Company's executive offices or principal business location to a point more than 20 miles (or greater distance with the prior written consent of the Executive) from the Company's current facilities in Palo Alto, California;

2.13.3. a reduction by the Company of the Executive's base salary or bonus rate as initially set forth herein or as the same may be increased from time to time, other than a comparable across-the-board reduction in base salary or bonus rate of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital;

2.13.4. any action by the Company (including the elimination of benefit plans without providing substitutes thereof or the reduction of the Executive's benefits thereunder) that would materially diminish the aggregate value of the Executive's fringe benefits as they exist at such time, other than a comparable across-the-board diminution in fringe benefits of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital; or

2.13.5. a material breach of this Agreement by the Company.

2.14. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

2.15. "***Initial B/P Holder***" means a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

2.16. "***Manager***" shall mean any of Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L. T. Wissel.

2.17. "***Managers' Bonus Rate***" shall mean the average for all Managers of X/Y where X is the actual bonus paid for the year in which a termination occurs or the Reference Year, as appropriate, and Y is the target bonus for such year; but including only those Managers who were employed for the entire year; provided that if there were no Managers employed for the entire year, then the Managers' Bonus Rate shall equal the Executive's Bonus Rate.

2.18. "***Management Team***" shall mean the Chairman of the Board (if the Chairman is an officer of the Company), the Chief Executive Officer, and the management employees reporting directly to the Chairman or the Chief Executive Officer, in office immediately prior to a Significant Transaction.

2.19. "***Original Purchase Price***" for each Share shall mean the price paid by the Executive for that Share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction after the date hereof).

2.20. "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

2.21. "***Preferred Shares***" shall mean the shares of the Company's Series A Preferred Stock and Series B Preferred Stock (or Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) that the Executive now owns or hereafter acquires from the Company.

2.22. "***Put***" shall mean the right of the Executive or his/her estate to require the Company to buy Vested Shares pursuant to Section 9.4.

2.23. "***Reference Year***" shall mean the year following the year in which the Executive's employment termination occurs.

2.24. "***Regular Severance***" shall mean:

2.24.1. an amount, payable in accordance with the Company's customary payroll practices, for each month during the Severance Period, equal to one-twelfth of the Executive's base salary in effect at the time of termination, subject to standard deductions and withholdings; plus

2.24.2. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment;

2.24.3. an amount, payable at such time as bonus payments are due to other employees of the Company for the year in which the termination occurs, equal to the sum of (a) one-half of the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination plus (b) the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days remaining in the year of Executive's termination after the date of termination; and

2.24.4. an amount, payable at such time as bonus payments are due to other employees of the Company for the Reference Year, equal to the Annual Bonus Rate for the Reference Year times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination.

2.25. ***"Right of Repurchase"*** shall mean the Company's right to repurchase Unvested Shares pursuant to Section 8.1.

2.26. "***Severance Period***" shall mean 12 months plus one additional month for each quarter, up to a maximum of 12, that the Executive has been employed by the Company in excess of two years. For avoidance of doubt, the maximum Severance Period is two years.

2.27. "***Shares***" shall mean the Common Shares and the Preferred Shares.

2.28. "***Significant Transaction***" shall mean a merger or consolidation of the Company with or into any Person, or an acquisition of all of the business of another Person regardless of form, if and only if, after such merger, consolidation or acquisition, directors of the Company immediately prior to such merger, consolidation or acquisition constitute a majority of the directors of the surviving entity or its parent.

2.29. "***Transactional Agreements***" shall have the meaning assigned in Section 1.

2.30. "***Unvested Founder Shares***" shall mean the Founder Shares held by the Executive that are then subject to the Right of Repurchase.

2.31. "***Vested Shares***" shall mean the Shares held by the Executive that are not subject to the Right of Repurchase.

2.32. "***Vesting Base Date***" shall mean the date(s) set forth on Exhibit A.

3. ***Employment.***

3.1. ***Term***. The Company hereby employs the Executive, and the Executive hereby accepts employment by the Company, upon the terms and conditions set forth in this Agreement. The term of the Executive's employment under the terms and conditions of this Agreement shall continue until the fifth anniversary of the date of this Agreement, subject to the provisions of Section 5.

3.2. ***Title***. The Executive shall have the title of Executive Chairman of the Company and shall also serve in such other capacity or capacities as the Board of Directors of the Company (the "***Board***") may from time to time prescribe. The Executive shall report to the Board.

3.3. ***Duties***. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Executive Chairman, consistent with the bylaws of the Company and as required by the Board.

3.4. ***Location***. Unless the Parties otherwise agree in writing, during the term of Executive's employment under this Agreement, the Executive shall perform the services Executive is required to perform pursuant to this Agreement at the Company's offices, located in Palo Alto, California; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

3.5. ***Commitment***. Unless otherwise agreed to in advance by the Company's Board of Directors, during the Executive's employment by the Company, the Executive shall devote 75% of Executive's business energies, interest, abilities and productive time to the proper and efficient performance of Executive's duties under this Agreement; provided, however, the Executive may engage in other outside business activity listed on Exhibit B hereto. If the Executive wishes to engage in any other outside work, the Executive agrees to notify and consult with the Board of Directors and shall not engage in such other outside work without the prior approval of the Board of Directors.

4. ***Compensation of the Executive.***

4.1. ***Base Salary***. The Company shall pay the Executive a base salary at a rate of three-hundred seventy-five thousand dollars ($375,000) per year (based on full-time employment) for calendar year 2004, subject to increases approved by the Board of Directors for calendar years thereafter, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day year or for part-time employment.

4.2. ***Bonus***. In addition to Executive's base salary, the Executive will be entitled to receive a bonus determined in accordance with an executive bonus plan established by the Board of Directors. The target bonus for the Executive shall be 50% (subject to increases approved by the Board of Directors) of the annual base salary rate (pro-rated for part-time employment).

4.3. ***Employment Taxes***. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

4.4. ***Benefits***. The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company's executive or key management employees.

4.5. ***Vacation***. Executive shall be eligible for paid time off and holidays in accordance with the Company's standard policies for executive employees.

4.6. ***Expenses***. The Company shall reimburse Executive for all reasonable, documented out-of-pocket business expenses incurred on behalf of the Company in the performance of the Executive's duties.

5. ***Termination.***

5.1. ***Termination by the Company***. The Executive's employment with the Company may be terminated under the following conditions:

5.1.1. ***Death or Disability***. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability.

5.1.2. ***For Cause***. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 5.1.2 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.1.3. ***Without Cause***. The Company may terminate the Executive's employment under this Agreement at any time for any reason other than for "Cause" by delivery of notice of such termination to the Executive. Any notice of termination given pursuant to this Section 5.1.3 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.2. ***Termination By The Executive***. The Executive may terminate the Executive's employment with the Company under the following conditions:

5.2.1. ***For Good Reason***. The Executive may terminate the Executive's employment under this Agreement for Good Reason effective 30 days following delivery of notice to the Company specifying the Good Reason relied upon by the Executive for such termination, provided that such notice is delivered within three (3) months following the occurrence of any event or events constituting Good Reason, and failure of the Company to cure the event which constitutes Good Reason within such 30-day period.

5.2.2. ***Without Good Reason***. The Executive may terminate the Executive's employment hereunder for other than Good Reason effective upon 30 days' notice to the Company.

5.3. ***Termination by Mutual Agreement of the Parties***. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement. Any agreement of termination entered into pursuant to this Section 5.3 shall effect termination as of the date specified in such agreement or, in the event no such date is specified, on the last day of the month in which such agreement is delivered or deemed delivered as provided in Section 15 below.

5.4. ***Termination of Obligations***. In the event of the termination of the Executive's employment hereunder and pursuant to this Section 5, the Company shall have no obligation to pay Executive any base salary, bonus or other compensation or benefits, except as otherwise provided in this Agreement or for benefits due to the Executive (and/or the Executive's dependents) under the terms of the Company's benefit plans or for reimbursement of reasonable, documented business expenses.

6. ***Compensation Upon Termination.***

6.1. ***Death or Complete Disability***. If the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination and accrued bonus (if any), subject to standard deductions and withholdings, at the rate in effect at the time of termination to Executive and/or Executive's heirs, and, except as provided in Section 9.2, the Company shall thereafter have no further obligations to the Executive and/or Executive's estate under this Agreement.

6.2. ***For Cause or Without Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination, subject to standard deductions and withholdings, at the rate in effect at the time of the notice of termination to Executive, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

6.3. ***Without Cause or For Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (With Good Reason) (other than With Good Reason due to a relocation as described in Section 2.13.2 which event is covered in Section 6.5), the Executive shall be entitled to the Executive's base salary and accrued and unused vacation benefits earned through the date of termination, in each case subject to standard deductions and withholdings. In addition,

upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.4. ***Following a Significant Transaction***. If the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction, and Executive is employed by the Company on the first anniversary of the effective date of the Significant Transaction, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.4, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5. Change of Control Severance.

6.5.1. If any of the following occur, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Change of Control Severance for the period and in the manner set forth in the definition thereof:

(i) the Executive's employment is terminated pursuant to Section 5.2.1 (With Good Reason) due to a relocation as described in Section 2.13.2;

(ii) the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (With Good Reason) in connection with a Change of Control or Significant Transaction; or

(iii) the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction and, prior to the first anniversary of the effective date of the Significant Transaction, the Executive's employment is terminated by the Company pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (for Good Reason).

6.5.2. In the event there is a Change of Control of the Company and provided Executive is employed by the Company on the first anniversary of the effective date of the Change of Control, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.5.2, at the time of such termination the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5.3. In the event that any payment received or to be received by the Executive pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "***Code***") and (ii) but for this Section 6.5.3, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then, subject to the provisions of Section 6.5.4 hereof, such Payment shall be reduced to the largest amount which would result in no portion of the Payment being subject to the Excise Tax. The determination of any required reduction pursuant to this Section 6.5.3 shall be made by a nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of a change of control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Company (the "***Accounting Firm***") in its discretion. All fees and expenses of the Accounting Firm shall be borne by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. If the Accounting Firm determines that a reduction is required by this Section 6.5.3, the Executive, in his/her discretion, may determine which portion of the Payment shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to him/her. If the Internal Revenue Service (the "***IRS***") determines that a Payment is subject to the Excise Tax, then Section 6.5.4 hereof shall apply, and the enforcement of Section 6.5.4 shall be the exclusive remedy to the Company for a failure by the Executive to reduce the Payment so that no portion thereof is subject to the Excise Tax.

6.5.4. If, notwithstanding any reduction described in Section 6.5.3 (or in the absence of any such reduction), the IRS determines that the Executive is liable for the Excise Tax as a result of the receipt of a Payment, then the Executive shall be obligated to pay back to the Company, within thirty (30) days after final IRS determination, an amount of the Payment equal to the "***Repayment Amount***". The Repayment Amount with respect to a Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Executive's net proceeds with respect to any Payment (after taking into account the payment of the Excise Tax imposed on such Payment) shall be maximized. If the Excise Tax is not eliminated pursuant to this Section 6.5.4, the Executive shall pay the Excise Tax.

7. *Restrictions on Transfer.*

Subject to the other provisions hereof, and except as permitted under the Right of First Refusal Agreement or Voting Agreement, Executive shall not sell, pledge or otherwise transfer to any person or entity any Shares or any interest therein until the earlier of (a) the fifth anniversary of the Initial Closing (as defined in the Purchase Agreement), and (b) the closing of a Change of Control.

8. ***Repurchase of Unvested Shares.***

8.1. ***Repurchase Right***. Except as provided in Section 8.2 below, if the Executive's employment is terminated, the Company has a right (but not an obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Founder Shares held by the Executive for a price per share equal to the Original Purchase Price; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Founder Shares on each monthly anniversary following the Vesting Base Date for such Founder Shares (i.e., so that the Right of Repurchase shall have expired with respect to all of such Common Shares 48 months following the Vesting Base Date).

8.2. ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 8.1,

8.2.1. if, prior to a Change of Control (and not in connection with such Change of Control), the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (For Good Reason) at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares;

8.2.2. if, in connection with a Change of Control or within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares;

8.2.3. if the Executive's employment is terminated as described in Section 6.5.1.(ii) or Section 6.5.1(iii), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares; or

8.2.4. if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares.

8.3. ***Procedure to Exercise Right of Repurchase***. To exercise its Right of Repurchase, the Company must give notice ("Notice of Repurchase") to the Executive (or his/her estate) within 90 days after the date of the Executive's termination and must purchase the Unvested Founder Shares no later than 10 days after the date of the notice.

9. ***Put/Call Rights on Vested Shares.***

9.1. ***Termination For Cause or Without Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to the lower of their (a) Original Purchase Price or (b) Fair Market Value.

9.2. ***Termination due to Death or Complete Disability.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company will have the right (but not the obligation) to Call, and the Executive or Executive's estate will have the right (but not the obligation) to Put, any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.3. ***Termination Without Cause or For Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.4. ***Procedure to Exercise Put/Call Rights***. To exercise its right to Call Vested Shares, the Company must give notice ("***Notice of Put/Call Exercise***") to the Executive (or his/her estate) within the later of (a) 90 days after the date of the Executive's termination and (b) if the Executive purchases the Vested Shares pursuant to an option exercise after the date of the Executive's termination, 30 days after the date of such purchase; and the Company must purchase the Vested Shares no later than 10 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period). To exercise its right to Put Vested Shares, the Executive or his/her estate must give notice ("***Notice of Put/Call Exercise***") to the Company within 395 days after the date of the Executive's termination. The Company will purchase the Vested Shares no later than 30 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period).

9.5. ***Termination of Call Right***. The Company's right to Call the Vested Shares shall terminate upon the closing of a Change of Control.

10. ***Permitted Transfers; Prohibited Transfers.***

10.1. ***Permitted Transfers.*** The restriction on transfer under Section 7 and the Company's right to Call Vested Shares under Section 9.4 shall not apply to:

10.1.1. any transfer of Shares to the ancestors, descendants, spouse or domestic partner of Executive, or to trusts for estate planning purposes for the benefit of such persons or the Executive;

10.1.2. any transfer of Shares by the laws of descent or distribution;

10.1.3. after the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), up to 20% of the Shares then held by the Executive, provided that the Company's Common Stock has been listed on an established stock exchange or a national market system for at least one year;

10.1.4. any transfer of Shares pursuant to, and in accordance with, Section 4 of the Right of First Refusal Agreement or Section 2 of the Voting Agreement; and

10.1.5. any sale of Shares pursuant to an effective registration statement under the Securities Act of 1933, as amended, in accordance with the Investor Rights Agreement.

The Shares transferred under Section 10.1.1 or 10.1.2 shall remain "***Shares***" for all purposes of this Agreement, the transferee shall be treated as the "***Executive***" for all purposes of this Agreement (other than with respect to matters related to employment) and, as a condition to any such transfer, the transferee shall be required to agree in writing to be bound by the provisions of Sections 7, 8 and 9 of this Agreement.

10.2. ***Prohibited Transfers.*** Any sale, pledge, or other transfer of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

11. ***Legend; Stop Transfer Instructions.***

11.1. ***Legend***. Each certificate representing Shares or issued to any person in connection with a transfer pursuant to Section 10.1.1 or 10.1.2 shall be endorsed with the following legend:

"THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN EMPLOYMENT AGREEMENT BY AND BETWEEN THE

HOLDER HEREOF (OR AN ASSIGNOR) AND THE COMPANY. A COPY OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

11.2. ***Stop Transfer Instructions***. The Executive agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in Section 11.1 above to enforce the provisions of this Agreement and the Company agrees promptly to do so. The legend shall be removed upon termination of Sections 7, 8 and 9 of this Agreement.

12. ***Survival of Certain Sections.***

Sections 1, 2 and 6 through 25 of this Agreement will survive the termination of Executive's employment under this Agreement.

13. ***Ownership.***

Executive represents and warrants that he or she is the sole legal and beneficial owner of the Shares subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares and that no consent of any other person or entity is required by reason of any community property interest or otherwise to enter into this Agreement and carry out the provisions hereof.

14. ***Market Standoff.***

The Executive hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the registration of a public offering of any securities of the Company under the Securities Act of 1933, as amended (the "***Securities Act***"), the Executive shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Shares or other securities of the Company (a "***Market Standoff***") without the prior written consent of the Company and the underwriter's representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Executive of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the underwriter's representative; provided, however, that the Executive shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Executive has agreed to a Market Standoff. The obligations of the Executive under this Section 14 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

15. ***Escrow of Shares.***

Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit D, until the expiration of Sections 7, 8 and 9 of this Agreement, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed in blank in the form attached hereto as Exhibit E. Upon request by the Company, the Executive will deliver the Shares to the Escrow Agent.

16. ***Assignment and Binding Effect.***

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, no employment obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

17. ***Notices.***

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Executive shall be sent to the address as set forth on the signature page or at such other address as the Executive may designate by ten days advance notice to the Company.

18. ***Governing Law.***

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

19. ***Amendment and Waiver.***

Any provision of this Agreement may be amended or waived only by a written instrument signed by the Company (with approval of a majority of the Board of Directors) and the Executive. Any such waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

20. ***Severability.***

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. ***Interpretation; Construction.***

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. ***Attorneys' Fees.***

If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

23. ***Cumulative Remedies.***

No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

24. ***Further Assurances.***

The parties to this Agreement agree to cooperate with the other parties, and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by the other parties, to carry into effect the intent and purpose of this Agreement.

25. ***Counterparts.***

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on February 18, 2004, to be effective as of February 18, 2004.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

EXECUTIVE:

/s/ Bruce C. Cozadd
Bruce C. Cozadd

Address: _____
_____

EXHIBIT A

VESTING BASE DATE

For shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be April 1, 2003.

For shares of the Company's Common Stock issued upon exercise by the Executive of an option to purchase shares of the Common Stock (an "Option"), the Vesting Base Date shall be the vesting base date set forth in the Option agreement/notice of exercise.

For shares of the Company's Common Stock hereafter acquired by the Executive from the Company, but not issued pursuant to an Option, the Vesting Base Date shall be the date of acquisition of such shares.

EXHIBIT B

OTHER BUSINESS ACTIVITY

Cerus Corporation: Member of the Board of Directors and Chairman of the Audit Committee.

Genencor International, Inc.: Member of the Board of Director and Chairman of the Audit Committee.

Non-profit organizations:

Board of Directors of Nueva School.

Stanford Medical Imaging Advisory Board.

Other non-profit Boards of Directors from time to time.

EXHIBIT C

RELEASE AND WAIVER OF CLAIMS

In consideration of the payments and other benefits set forth in Section 6.4 of the Employment Agreement dated _____, 2004, to be effective as of _____, 200__ to which this form is attached, I, _____, hereby furnish JAZZ PHARMACEUTICALS, INC. (the "***Company***") with the following release and waiver ("***Release and Waiver***").

In exchange for the consideration provided to me by this Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, insurers, Affiliates, and assigns from any and all claims, demands, liabilities, and obligations. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all contractual claims, including claims for breach of contract, wrongful termination, or breach of the covenant of good faith and fair dealing; (3) all tort claims, including claims for fraud, defamation, and emotional distress; and (4) all federal, state, and local statutory claims including claims for discrimination, harassment, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964, as amended, the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967, as amended ("***ADEA***"), or the California Fair Employment and Housing Act. However, this general release does not extend to rights and benefits expressly provided for in the Employment Agreement, under the governing documents for any securities I own of record, and under any agreement, bylaw or statute providing me with indemnification.

Except as provided in the Employment Agreement described above, I acknowledge and agree that the Company already has paid me any and all salary, other wages, bonuses, commissions, incentives, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company I am owed, and that no such further payments, amounts or interests are owed or will be owed.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired.

If I am less than 40 years of age upon execution of this Release and Waiver, I acknowledge that I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have five (5) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier).

I agree neither to file nor to encourage or knowingly permit another to file any claim, charge, grievance, complaint or action for any sort of monetary damages against the Company and other released parties set forth above concerning any matter covered by this Agreement, except as otherwise provided by law.

Date: _____ _____

[TYPE NAME]

EXHIBIT D

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a Delaware corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Executive***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Employment Agreement, dated as of _____, 2004 (the "***Agreement***") between the Company and the Executive (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Executive and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Executive and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Executive irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Executive does hereby irrevocably constitute and appoint you as Executive's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Executive shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Executive, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Executive a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one hundred (100) days after cessation of Executive's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Executive a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Executive, you shall deliver all of the same to Executive and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Executive while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

EXECUTIVE: [_____]

_____

_____

_____

Executive's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:
[_____]

By: _____

Name: _____

Title: _____

EXHIBIT E

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Employment Agreement between the undersigned ("***Executive***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated _____, 2004 (the "***Agreement***"), Executive hereby sells, assigns and transfers unto the Company _____ (_____) shares of the Common Stock of the Company, standing in Executive's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____
Name: _____

_____
Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Executive.

EXHIBIT 10.3

EMPLOYMENT AGREEMENT

BY AND BETWEEN

JAZZ PHARMACEUTICALS, INC.

AND

SAMUEL R. SAKS

TABLE OF CONTENTS

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is made and entered into on February 18, 2004, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and SAMUEL R. SAKS (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an offer letter, dated April 1, 2003 (the "***Offer Letter***").

B. In connection with the Company's sale of Series A Preferred Stock to investors, the Executive and the Company entered into the Stock Restriction Agreement, dated April 30, 2003, as amended (the "***Stock Agreement***").

C. Certain parties are now proposing to purchase shares of the Company's Series B Preferred Stock and Series B Prime Preferred Stock.

D. The Company and the Executive wish to enter into this Agreement in order to (i) amend and restate the terms and conditions of the Company's retention of the Executive's services and (ii) amend and restate the terms and conditions of certain restrictions on the capital stock of the Company held by the Executive.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. *Integration.*

This Agreement and the Transactional Agreements constitute the entire agreement between the Company and the Executive regarding the subject matter hereof and thereof and supersede and replace any and all prior oral and written negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof and thereof; provided, however, the Offer Letter, the Stock Agreement, and the Employee Confidential Information and Inventions Agreement between the Company and the Executive shall remain in full force and effect. To the extent this Agreement conflicts with the Offer Letter or the Stock Agreement, this Agreement controls. To the extent this Agreement conflicts with the Employee Confidential Information and Inventions Agreement, the Employee Confidential Information and Inventions Agreement controls. To the extent this Agreement conflicts with the terms of the Company's employee handbook in effect from time to time, this Agreement controls. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the

Preferred Stock Purchase Agreement (the "***Purchase Agreement***") dated January 27, 2004 among the Company and other parties identified therein, the Amended and Restated Investor Rights Agreement (the "***Investor Rights Agreement***") of even date herewith among the Company and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement (the "***Right of First Refusal Agreement***") of even date herewith among the Company and the parties identified therein, and the Amended and Restated Voting Agreement (the "***Voting Agreement***") of even date herewith among the Company and the parties identified therein, each as may be amended in accordance with its terms.

2. *Definitions.*

For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person.

2.2. "***Annual Bonus Rate for the Termination Year***" shall mean:

2.2.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.2.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the year in which the termination occurs times the Executive's target bonus percentage for the year in which the termination occurs.

2.3. "***Annual Bonus Rate for the Reference Year***" shall mean:

2.3.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.3.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the Reference Year times the Executive's target bonus percentage for the year in which the termination occurs.

2.4. "***Call***" shall mean the right of the Company to buy Vested Shares pursuant to Section 9.4.

2.5. "***Cause***" shall mean the occurrence of any of the following events:

2.5.1. the Executive's willful misconduct or gross negligence that is materially injurious to the Company;

2.5.2. the Executive's conviction or plea of guilty or nolo contendere to any felony or crime involving moral turpitude;

2.5.3. the Executive's commission of any act of fraud with respect to the Company;

2.5.4. the Executive's willful violation of any federal or state securities law; or

2.5.5. the Executive's willful and continued failure to perform the Executive's job duties after 30 days' written notice from the Board setting forth in detail the specific respects in which it believes the Executive has willfully and not substantially performed such job duties and a failure by Executive to cure within such 30-day period if capable of being cured.

2.6. ***"Change of Control"*** means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

2.7. "***Change of Control Severance***" shall mean:

2.7.1. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary in effect at the time of termination times (b) the number of months included in the Severance Period, subject to standard deductions and withholdings;

2.7.2. an amount, payable in one lump sum at the time of termination, equal to the product of the Executive's Bonus Rate times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination;

2.7.3. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary as in effect at the time of termination times (b) the Executive's Bonus Rate times (c) the number of months included in the Severance Period, subject to standard deductions and withholdings; and

2.7.4. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment.

2.8. "***Common Shares***" shall mean the shares of Common Stock that the Executive now owns or hereafter acquires from the Company.

2.9. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance then in force covering employees of the Company. In the event the Company has no policy of disability income insurance in force covering employees of the Company, the term "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board and the Executive, determines to have incapacitated the Executive from performing all of the Executive's usual services for the Company for a period of at least 120 days during any 12 month period (whether or not consecutive) and is expected to continue to incapacitate the Executive thereafter. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

2.10. *"**Executive's Bonus Rate**"* shall mean:

2.10.1. if the Executive has not previously received an annual bonus, the target bonus percentage for the year in which the termination occurs;

2.10.2. if the Executive has previously received one annual bonus payment at the time of termination, that percentage calculated by dividing the annual bonus actually paid for the year to which the bonus relates by the salary actually paid for such year; or

2.10.3. if the Executive has received more than one annual bonus payment at the time of termination, the average over the prior two years of the percentage calculated by dividing the bonus actually paid for the year to which the bonus relates by the salary actually paid for such year.

2.11. "***Fair Market Value***" shall mean the value of the Shares determined in good faith by the Board of Directors, provided that (a)(i) if the Shares are listed on any established stock exchange or a national market system, their fair market value shall be the average of the closing sales price for the Shares as quoted on such system or exchange (or the largest such exchange) over the 5-trading-day period ending immediately prior to the date of the Notice of Put/Call Exercise, as reported in the Wall Street Journal or similar publication, and (ii) if the Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for the Shares on the date of the Notice of Put/Call Exercise (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices), and (b) if clauses (a)(i) or (a)(ii) are not applicable, the Board of Directors shall apply valuation techniques generally used by reputable investment bankers (without giving effect to any premium that might be paid by a strategic buyer in an acquisition) to determine the value of the Shares as of the date of the Notice of Put/Call Exercise.

2.12. "***Founder Shares***" shall mean shares of Common Stock that the Executive owns immediately prior to the Initial Closing (as defined in the Purchase Agreement).

2.13. "***Good Reason***" shall mean the occurrence of any of the following events without the Executive's written consent:

2.13.1. a substantial diminution by the Company in the nature or status of the Employee's responsibilities or an adverse change in title or reporting level as they exist on the date of this Agreement, or the addition of responsibilities of a nature or status inconsistent with the office of Chief Executive Officer of a company such as the Company;

2.13.2. the relocation of the Company's executive offices or principal business location to a point more than 20 miles (or greater distance with the prior written consent of the Executive) from the Company's current facilities in Palo Alto, California;

2.13.3. a reduction by the Company of the Executive's base salary or bonus rate as initially set forth herein or as the same may be increased from time to time, other than a comparable across-the-board reduction in base salary or bonus rate of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital;

2.13.4. any action by the Company (including the elimination of benefit plans without providing substitutes thereof or the reduction of the Executive's benefits thereunder) that would materially diminish the aggregate value of the Executive's fringe benefits as they exist at such time, other than a comparable across-the-board diminution in fringe benefits of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital; or

2.13.5. a material breach of this Agreement by the Company.

2.14. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

2.15. "***Initial B/P Holder***" means a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

2.16. "***Manager***" shall mean any of Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L. T. Wissel.

2.17. "***Managers' Bonus Rate***" shall mean the average for all Managers of X/Y where X is the actual bonus paid for the year in which a termination occurs or the Reference Year, as appropriate, and Y is the target bonus for such year; but including only those Managers who were employed for the entire year; provided that if there were no Managers employed for the entire year, then the Managers' Bonus Rate shall equal the Executive's Bonus Rate.

2.18. "***Management Team***" shall mean the Chairman of the Board (if the Chairman is an officer of the Company), the Chief Executive Officer, and the management employees reporting directly to the Chairman or the Chief Executive Officer, in office immediately prior to a Significant Transaction.

2.19. "***Original Purchase Price***" for each Share shall mean the price paid by the Executive for that Share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction after the date hereof).

2.20. "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

2.21. "***Preferred Shares***" shall mean the shares of the Company's Series A Preferred Stock and Series B Preferred Stock (or Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) that the Executive now owns or hereafter acquires from the Company.

2.22. "***Put***" shall mean the right of the Executive or his/her estate to require the Company to buy Vested Shares pursuant to Section 9.4.

2.23. "***Reference Year***" shall mean the year following the year in which the Executive's employment termination occurs.

2.24. "***Regular Severance***" shall mean:

2.24.1. an amount, payable in accordance with the Company's customary payroll practices, for each month during the Severance Period, equal to one-twelfth of the Executive's base salary in effect at the time of termination, subject to standard deductions and withholdings; plus

2.24.2. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment;

2.24.3. an amount, payable at such time as bonus payments are due to other employees of the Company for the year in which the termination occurs, equal to the sum of (a) one-half of the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination plus (b) the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days remaining in the year of Executive's termination after the date of termination; and

2.24.4. an amount, payable at such time as bonus payments are due to other employees of the Company for the Reference Year, equal to the Annual Bonus Rate for the Reference Year times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination.

2.25. ***"Right of Repurchase"*** shall mean the Company's right to repurchase Unvested Shares pursuant to Section 8.1.

2.26. "***Severance Period***" shall mean 12 months plus one additional month for each quarter, up to a maximum of 12, that the Executive has been employed by the Company in excess of two years. For avoidance of doubt, the maximum Severance Period is two years.

2.27. "***Shares***" shall mean the Common Shares and the Preferred Shares.

2.28. "***Significant Transaction***" shall mean a merger or consolidation of the Company with or into any Person, or an acquisition of all of the business of another Person regardless of form, if and only if, after such merger, consolidation or acquisition, directors of the Company immediately prior to such merger, consolidation or acquisition constitute a majority of the directors of the surviving entity or its parent.

2.29. "***Transactional Agreements***" shall have the meaning assigned in Section 1.

2.30. "***Unvested Founder Shares***" shall mean the Founder Shares held by the Executive that are then subject to the Right of Repurchase.

2.31. "***Vested Shares***" shall mean the Shares held by the Executive that are not subject to the Right of Repurchase.

2.32. "***Vesting Base Date***" shall mean the date(s) set forth on Exhibit A.

3. *Employment.*

3.1. ***Term***. The Company hereby employs the Executive, and the Executive hereby accepts employment by the Company, upon the terms and conditions set forth in this Agreement. The term of the Executive's employment under the terms and conditions of this Agreement shall continue until the fifth anniversary of the date of this Agreement, subject to the provisions of Section 5.

3.2. ***Title***. The Executive shall have the title of Chief Executive Officer of the Company and shall also serve in such other capacity or capacities as the Board of Directors of the Company (the "***Board***") may from time to time prescribe. The Executive shall report to the Chairman of the Company.

3.3. ***Duties***. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Chief Executive Officer, consistent with the bylaws of the Company and as required by the Board.

3.4. ***Location***. Unless the Parties otherwise agree in writing, during the term of Executive's employment under this Agreement, the Executive shall perform the services Executive is required to perform pursuant to this Agreement at the Company's

offices, located in Palo Alto, California; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

3.5. ***Commitment***. Unless otherwise agreed to in advance by the Company's Board of Directors, during the Executive's employment by the Company, the Executive shall devote substantially all of Executive's business energies, interest, abilities and productive time to the proper and efficient performance of Executive's duties under this Agreement; provided, however, the Executive may engage in other outside business activity listed on Exhibit B hereto. If the Executive wishes to engage in any other outside work, the Executive agrees to notify and consult with the Board of Directors and shall not engage in such other outside work without the prior approval of the Board of Directors.

4. ***Compensation of the Executive.***

4.1. ***Base Salary***. The Company shall pay the Executive a base salary at a rate of three hundred seventy-five thousand dollars ($375,000) per year for calendar year 2004, subject to increases approved by the Board of Directors for calendar years thereafter, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day year.

4.2. ***Bonus***. In addition to Executive's base salary, the Executive will be entitled to receive a bonus determined in accordance with an executive bonus plan established by the Board of Directors. The target bonus for the Executive shall be 50% (subject to increases approved by the Board of Directors) of the annual base salary rate.

4.3. ***Employment Taxes***. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

4.4. ***Benefits***. The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company's executive or key management employees.

4.5. ***Vacation***. Executive shall be eligible for paid time off and holidays in accordance with the Company's standard policies for executive employees.

4.6. ***Expenses***. The Company shall reimburse Executive for all reasonable, documented out-of-pocket business expenses incurred on behalf of the Company in the performance of the Executive's duties.

5. ***Termination.***

5.1. ***Termination by the Company***. The Executive's employment with the Company may be terminated under the following conditions:

5.1.1. ***Death or Disability***. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability.

5.1.2. ***For Cause***. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 5.1.2 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.1.3. ***Without Cause***. The Company may terminate the Executive's employment under this Agreement at any time for any reason other than for "Cause" by delivery of notice of such termination to the Executive. Any notice of termination given pursuant to this Section 5.1.3 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.2. ***Termination By The Executive***. The Executive may terminate the Executive's employment with the Company under the following conditions:

5.2.1. ***For Good Reason***. The Executive may terminate the Executive's employment under this Agreement for Good Reason effective 30 days following delivery of notice to the Company specifying the Good Reason relied upon by the Executive for such termination, provided that such notice is delivered within three (3) months following the occurrence of any event or events constituting Good Reason, and failure of the Company to cure the event which constitutes Good Reason within such 30-day period.

5.2.2. ***Without Good Reason***. The Executive may terminate the Executive's employment hereunder for other than Good Reason effective upon 30 days' notice to the Company.

5.3. ***Termination by Mutual Agreement of the Parties***. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement. Any agreement of termination entered into

pursuant to this Section 5.3 shall effect termination as of the date specified in such agreement or, in the event no such date is specified, on the last day of the month in which such agreement is delivered or deemed delivered as provided in Section 15 below.

5.4. ***Termination of Obligations***. In the event of the termination of the Executive's employment hereunder and pursuant to this Section 5, the Company shall have no obligation to pay Executive any base salary, bonus or other compensation or benefits, except as otherwise provided in this Agreement or for benefits due to the Executive (and/or the Executive's dependents) under the terms of the Company's benefit plans or for reimbursement of reasonable, documented business expenses.

6. ***Compensation Upon Termination.***

6.1. ***Death or Complete Disability***. If the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination and accrued bonus (if any), subject to standard deductions and withholdings, at the rate in effect at the time of termination to Executive and/or Executive's heirs, and, except as provided in Section 9.2, the Company shall thereafter have no further obligations to the Executive and/or Executive's estate under this Agreement.

6.2. ***For Cause or Without Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination, subject to standard deductions and withholdings, at the rate in effect at the time of the notice of termination to Executive, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

6.3. ***Without Cause or For Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (With Good Reason) (other than With Good Reason due to a relocation as described in Section 2.13.2 which event is covered in Section 6.5), the Executive shall be entitled to the Executive's base salary and accrued and unused vacation benefits earned through the date of termination, in each case subject to standard deductions and withholdings. In addition, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.4. ***Following a Significant Transaction***. If the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction, and

Executive is employed by the Company on the first anniversary of the effective date of the Significant Transaction, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.4, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5. ***Change of Control Severance.***

6.5.1. If any of the following occur, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Change of Control Severance for the period and in the manner set forth in the definition thereof:

(i) the Executive's employment is terminated pursuant to Section 5.2.1 (With Good Reason) due to a relocation as described in Section 2.13.2; or

(ii) the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (With Good Reason) in connection with a Change of Control or Significant Transaction.

6.5.2. In the event there is a Change of Control of the Company and provided Executive is employed by the Company on the first anniversary of the effective date of the Change of Control, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.5.2, at the time of such termination the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5.3. In the event that any payment received or to be received by the Executive pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "***Code***") and (ii) but for this Section 6.5.3, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then, subject to the provisions of Section 6.5.4 hereof, such Payment shall be reduced to the largest amount which would result in no portion of the Payment being subject to the Excise Tax. The determination of any required reduction pursuant to this Section 6.5.3 shall be made by a nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of a change of control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Company (the "***Accounting Firm***") in its discretion. All fees and expenses of the Accounting Firm shall be borne by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. If the

Accounting Firm determines that a reduction is required by this Section 6.5.3, the Executive, in his/her discretion, may determine which portion of the Payment shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to him/her. If the Internal Revenue Service (the "***IRS***") determines that a Payment is subject to the Excise Tax, then Section 6.5.4 hereof shall apply, and the enforcement of Section 6.5.4 shall be the exclusive remedy to the Company for a failure by the Executive to reduce the Payment so that no portion thereof is subject to the Excise Tax.

6.5.4. If, notwithstanding any reduction described in Section 6.5.3 (or in the absence of any such reduction), the IRS determines that the Executive is liable for the Excise Tax as a result of the receipt of a Payment, then the Executive shall be obligated to pay back to the Company, within thirty (30) days after final IRS determination, an amount of the Payment equal to the "***Repayment Amount***". The Repayment Amount with respect to a Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Executive's net proceeds with respect to any Payment (after taking into account the payment of the Excise Tax imposed on such Payment) shall be maximized. If the Excise Tax is not eliminated pursuant to this Section 6.5.4, the Executive shall pay the Excise Tax.

7. ***Restrictions on Transfer.***

Subject to the other provisions hereof, and except as permitted under the Right of First Refusal Agreement or Voting Agreement, Executive shall not sell, pledge or otherwise transfer to any person or entity any Shares or any interest therein until the earlier of (a) the fifth anniversary of the Initial Closing (as defined in the Purchase Agreement), and (b) the closing of a Change of Control.

8. ***Repurchase of Unvested Shares.***

8.1. ***Repurchase Right***. Except as provided in Section 8.2 below, if the Executive's employment is terminated, the Company has a right (but not an obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Founder Shares held by the Executive for a price per share equal to the Original Purchase Price; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Founder Shares on each monthly anniversary following the Vesting Base Date for such Founder Shares (i.e., so that the Right of Repurchase shall have expired with respect to all of such Common Shares 48 months following the Vesting Base Date).

8.2. ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 8.1,

8.2.1. if, prior to a Change of Control (and not in connection with such Change of Control), the Executive's employment is terminated pursuant to

Section 5.1.3 (Without Cause) or Section 5.2.1 (For Good Reason) at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares;

8.2.2. if, in connection with a Change of Control or within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares;

8.2.3. if the Executive's employment is terminated as described in Section 6.5.1.(ii), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares; or

8.2.4. if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares.

8.3. ***Procedure to Exercise Right of Repurchase***. To exercise its Right of Repurchase, the Company must give notice ("Notice of Repurchase") to the Executive (or his/her estate) within 90 days after the date of the Executive's termination and must purchase the Unvested Founder Shares no later than 10 days after the date of the notice.

9. ***Put/Call Rights on Vested Shares.***

9.1. ***Termination For Cause or Without Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to the lower of their (a) Original Purchase Price or (b) Fair Market Value.

9.2. ***Termination due to Death or Complete Disability.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company will have the right (but not the obligation) to Call, and the Executive or Executive's estate will have the right (but not the obligation) to Put, any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.3. ***Termination Without Cause or For Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.4. ***Procedure to Exercise Put/Call Rights***. To exercise its right to Call Vested Shares, the Company must give notice ("***Notice of Put/Call Exercise***") to the Executive (or his/her estate) within the later of (a) 90 days after the date of the Executive's termination and (b) if the Executive purchases the Vested Shares pursuant to an option exercise after the date of the Executive's termination, 30 days after the date of such purchase; and the Company must purchase the Vested Shares no later than 10 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period). To exercise its right to Put Vested Shares, the Executive or his/her estate must give notice ("***Notice of Put/Call Exercise***") to the Company within 395 days after the date of the Executive's termination. The Company will purchase the Vested Shares no later than 30 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period).

9.5. ***Termination of Call Right***. The Company's right to Call the Vested Shares shall terminate upon the closing of a Change of Control.

10. ***Permitted Transfers; Prohibited Transfers.***

10.1. ***Permitted Transfers.*** The restriction on transfer under Section 7 and the Company's right to Call Vested Shares under Section 9.4 shall not apply to:

10.1.1. any transfer of Shares to the ancestors, descendants, spouse or domestic partner of Executive, or to trusts for estate planning purposes for the benefit of such persons or the Executive;

10.1.2. any transfer of Shares by the laws of descent or distribution;

10.1.3. after the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), up to 20% of the Shares then held by the Executive, provided that the Company's Common Stock has been listed on an established stock exchange or a national market system for at least one year;

10.1.4. any transfer of Shares pursuant to, and in accordance with, Section 4 of the Right of First Refusal Agreement or Section 2 of the Voting Agreement; and

10.1.5. any sale of Shares pursuant to an effective registration statement under the Securities Act of 1933, as amended, in accordance with the Investor Rights Agreement.

The Shares transferred under Section 10.1.1 or 10.1.2 shall remain "***Shares***" for all purposes of this Agreement, the transferee shall be treated as the "***Executive***" for all purposes of this Agreement (other than with respect to matters related to employment) and, as a condition to any such transfer, the transferee shall be required to agree in writing to be bound by the provisions of Sections 7, 8 and 9 of this Agreement.

10.2. ***Prohibited Transfers.*** Any sale, pledge, or other transfer of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

11. ***Legend; Stop Transfer Instructions.***

11.1. ***Legend***. Each certificate representing Shares or issued to any person in connection with a transfer pursuant to Section 10.1.1 or 10.1.2 shall be endorsed with the following legend:

> "THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN EMPLOYMENT AGREEMENT BY AND BETWEEN THE HOLDER HEREOF (OR AN ASSIGNOR) AND THE COMPANY. A COPY OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

11.2. ***Stop Transfer Instructions***. The Executive agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in Section 11.1 above to enforce the provisions of this Agreement and the Company agrees promptly to do so. The legend shall be removed upon termination of Sections 7, 8 and 9 of this Agreement.

12. ***Survival of Certain Sections.***

Sections 1, 2 and 6 through 25 of this Agreement will survive the termination of Executive's employment under this Agreement.

13. ***Ownership.***

Executive represents and warrants that he or she is the sole legal and beneficial owner of the Shares subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares and that no consent of any other person or entity is required by reason of any community property interest or otherwise to enter into this Agreement and carry out the provisions hereof.

14. ***Market Standoff.***

The Executive hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the registration of a public offering of any securities of the Company under the Securities Act of 1933, as amended (the "***Securities Act***"), the Executive shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Shares or other securities of the Company (a "***Market Standoff***") without the prior written consent of the Company and the underwriter's representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Executive of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the underwriter's representative; provided, however, that the Executive shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Executive has agreed to a Market Standoff. The obligations of the Executive under this Section 14 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

15. ***Escrow of Shares.***

Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit D, until the expiration of Sections 7, 8 and 9 of this Agreement, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed in blank in the form attached hereto as Exhibit E. Upon request by the Company, the Executive will deliver the Shares to the Escrow Agent.

16. ***Assignment and Binding Effect.***

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, no employment obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

17. ***Notices.***

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Executive shall be sent to the address as set forth on the signature page or at such other address as the Executive may designate by ten days advance notice to the Company.

18. ***Governing Law.***

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

19. ***Amendment and Waiver.***

Any provision of this Agreement may be amended or waived only by a written instrument signed by the Company (with approval of a majority of the Board of Directors) and the Executive. Any such waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

20. ***Severability.***

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. ***Interpretation; Construction.***

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. ***Attorneys' Fees.***

If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

23. ***Cumulative Remedies.***

No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

24. ***Further Assurances.***

The parties to this Agreement agree to cooperate with the other parties, and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by the other parties, to carry into effect the intent and purpose of this Agreement.

25. ***Counterparts.***

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on February 18, 2004, to be effective as of February 18, 2004.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Bruce C. Cozadd
Bruce C. Cozadd, Chairman

EXECUTIVE:

/s/ Samuel R. Saks
Samuel R. Saks

Address: _____

EXHIBIT A

VESTING BASE DATE

For shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be April 1, 2003.

For shares of the Company's Common Stock issued upon exercise by the Executive of an option to purchase shares of the Common Stock (an "Option"), the Vesting Base Date shall be the vesting base date set forth in the Option agreement/notice of exercise.

For shares of the Company's Common Stock hereafter acquired by the Executive from the Company, but not issued pursuant to an Option, the Vesting Base Date shall be the date of acquisition of such shares.

EXHIBIT B

OTHER BUSINESS ACTIVITY

Corixa Corporation: Member of the Board of Directors.

Scientific Advisory Boards:

Alexza Molecular Delivery Corporation

ArQule, Inc.

CMEA Ventures

Genencor International, Inc.

ProQuest Investments

TransForm Pharmaceuticals, Inc.

EXHIBIT C

RELEASE AND WAIVER OF CLAIMS

In consideration of the payments and other benefits set forth in Section 6.4 of the Employment Agreement dated _____, 2004, to be effective as of _____, 200_ to which this form is attached, I, _____, hereby furnish JAZZ PHARMACEUTICALS, INC. (the "***Company***") with the following release and waiver ("***Release and Waiver***").

In exchange for the consideration provided to me by this Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, insurers, Affiliates, and assigns from any and all claims, demands, liabilities, and obligations. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all contractual claims, including claims for breach of contract, wrongful termination, or breach of the covenant of good faith and fair dealing; (3) all tort claims, including claims for fraud, defamation, and emotional distress; and (4) all federal, state, and local statutory claims including claims for discrimination, harassment, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964, as amended, the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967, as amended ("***ADEA***"), or the California Fair Employment and Housing Act. However, this general release does not extend to rights and benefits expressly provided for in the Employment Agreement, under the governing documents for any securities I own of record, and under any agreement, bylaw or statute providing me with indemnification.

Except as provided in the Employment Agreement described above, I acknowledge and agree that the Company already has paid me any and all salary, other wages, bonuses, commissions, incentives, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company I am owed, and that no such further payments, amounts or interests are owed or will be owed.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired.

If I am less than 40 years of age upon execution of this Release and Waiver, I acknowledge that I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have five (5) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier).

I agree neither to file nor to encourage or knowingly permit another to file any claim, charge, grievance, complaint or action for any sort of monetary damages against the Company and other released parties set forth above concerning any matter covered by this Agreement, except as otherwise provided by law.

Date: _____

_____

[TYPE NAME]

EXHIBIT D

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a Delaware corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Executive***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Employment Agreement, dated as of _____, 2004 (the "***Agreement***") between the Company and the Executive (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Executive and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Executive and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Executive irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Executive does hereby irrevocably constitute and appoint you as Executive's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Executive shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Executive, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Executive a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one hundred (100) days after cessation of Executive's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Executive a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Executive, you shall deliver all of the same to Executive and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Executive while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

Dated: _____

EXECUTIVE: [_____]

_____

_____

_____
Executive's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT E

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Employment Agreement between the undersigned ("***Executive***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated _____, 2004 (the "***Agreement***"), Executive hereby sells, assigns and transfers unto the Company _____ _____ (_____) shares of the Common Stock of the Company, standing in Executive's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Executive.

EXHIBIT 10.4

EMPLOYMENT AGREEMENT

BY AND BETWEEN

JAZZ PHARMACEUTICALS, INC.

AND

ROBERT M. MYERS

TABLE OF CONTENTS

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is made and entered into on February 18, 2004, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and ROBERT M. MYERS (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an offer letter, dated April 1, 2003 (the "***Offer Letter***").

B. In connection with the Company's sale of Series A Preferred Stock to investors, the Executive and the Company entered into the Amended and Restated Stock Purchase Agreement, dated April 30, 2003 (the "***Stock Agreement***").

C. Certain parties are now proposing to purchase shares of the Company's Series B Preferred Stock and Series B Prime Preferred Stock.

D. The Company and the Executive wish to enter into this Agreement in order to (i) amend and restate the terms and conditions of the Company's retention of the Executive's services and (ii) amend and restate the terms and conditions of certain restrictions on the capital stock of the Company held by the Executive.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. ***Integration*.**

This Agreement and the Transactional Agreements constitute the entire agreement between the Company and the Executive regarding the subject matter hereof and thereof and supersede and replace any and all prior oral and written negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof and thereof; provided, however, the Offer Letter, the Stock Agreement, and the Employee Confidential Information and Inventions Agreement between the Company and the Executive shall remain in full force and effect. To the extent this Agreement conflicts with the Offer Letter or the Stock Agreement, this Agreement controls. To the extent this Agreement conflicts with the Employee Confidential Information and Inventions Agreement, the Employee Confidential Information and Inventions Agreement controls. To the extent this Agreement conflicts with the terms of the Company's employee handbook in effect from time to time, this Agreement controls. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the

Preferred Stock Purchase Agreement (the "***Purchase Agreement***") dated January 27, 2004 among the Company and other parties identified therein, the Amended and Restated Investor Rights Agreement (the "***Investor Rights Agreement***") of even date herewith among the Company and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement (the "***Right of First Refusal Agreement***") of even date herewith among the Company and the parties identified therein, and the Amended and Restated Voting Agreement (the "***Voting Agreement***") of even date herewith among the Company and the parties identified therein, each as may be amended in accordance with its terms.

2. ***Definitions.***

For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person.

2.2. "***Annual Bonus Rate for the Termination Year***" shall mean:

2.2.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.2.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the year in which the termination occurs times the Executive's target bonus percentage for the year in which the termination occurs.

2.3. "***Annual Bonus Rate for the Reference Year***" shall mean:

2.3.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.3.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the Reference Year times the Executive's target bonus percentage for the year in which the termination occurs.

2.4. "***Call***" shall mean the right of the Company to buy Vested Shares pursuant to Section 9.4.

2.5. "***Cause***" shall mean the occurrence of any of the following events:

2.5.1. the Executive's willful misconduct or gross negligence that is materially injurious to the Company;

2.5.2. the Executive's conviction or plea of guilty or nolo contendere to any felony or crime involving moral turpitude;

2.5.3. the Executive's commission of any act of fraud with respect to the Company;

2.5.4. the Executive's willful violation of any federal or state securities law; or

2.5.5. the Executive's willful and continued failure to perform the Executive's job duties after 30 days' written notice from the Board setting forth in detail the specific respects in which it believes the Executive has willfully and not substantially performed such job duties and a failure by Executive to cure within such 30-day period if capable of being cured.

2.6. ***"Change of Control"*** means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

2.7. "***Change of Control Severance***" shall mean:

2.7.1. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary in effect at the time of termination times (b) the number of months included in the Severance Period, subject to standard deductions and withholdings;

2.7.2. an amount, payable in one lump sum at the time of termination, equal to the product of the Executive's Bonus Rate times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination;

2.7.3. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary as in effect at the time of termination times (b) the Executive's Bonus Rate times (c) the number of months included in the Severance Period, subject to standard deductions and withholdings; and

2.7.4. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment.

2.8. "***Common Shares***" shall mean the shares of Common Stock that the Executive now owns or hereafter acquires from the Company.

2.9. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance then in force covering employees of the Company. In the event the Company has no policy of disability income insurance in force covering employees of the Company, the term "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board and the Executive, determines to have incapacitated the Executive from performing all of the Executive's usual services for the Company for a period of at least 120 days during any 12 month period (whether or not consecutive) and is expected to continue to incapacitate the Executive thereafter. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

2.10. *"**Executive's Bonus Rate**"* shall mean:

2.10.1. if the Executive has not previously received an annual bonus, the target bonus percentage for the year in which the termination occurs;

2.10.2. if the Executive has previously received one annual bonus payment at the time of termination, that percentage calculated by dividing the annual bonus actually paid for the year to which the bonus relates by the salary actually paid for such year; or

2.10.3. if the Executive has received more than one annual bonus payment at the time of termination, the average over the prior two years of the percentage calculated by dividing the bonus actually paid for the year to which the bonus relates by the salary actually paid for such year.

2.11. "***Fair Market Value***" shall mean the value of the Shares determined in good faith by the Board of Directors, provided that (a)(i) if the Shares are listed on any established stock exchange or a national market system, their fair market value shall be the average of the closing sales price for the Shares as quoted on such system or exchange (or the largest such exchange) over the 5-trading-day period ending immediately prior to the date of the Notice of Put/Call Exercise, as reported in the Wall Street Journal or similar publication, and (ii) if the Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for the Shares on the date of the Notice of Put/Call Exercise (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices), and (b) if clauses (a)(i) or (a)(ii) are not applicable, the Board of Directors shall apply valuation techniques generally used by reputable investment bankers (without giving effect to any premium that might be paid by a strategic buyer in an acquisition) to determine the value of the Shares as of the date of the Notice of Put/Call Exercise.

2.12. "***Founder Shares***" shall mean shares of Common Stock that the Executive owns immediately prior to the Initial Closing (as defined in the Purchase Agreement).

2.13. "***Good Reason***" shall mean the occurrence of any of the following events without the Executive's written consent:

2.13.1. a substantial diminution by the Company in the nature or status of the Employee's responsibilities or an adverse change in title or reporting level as they exist on the date of this Agreement, or the addition of responsibilities of a nature or status inconsistent with the office of Executive Vice President and Chief Business Officer of a company such as the Company;

2.13.2. the relocation of the Company's executive offices or principal business location to a point more than 20 miles (or greater distance with the prior written consent of the Executive) from the Company's current facilities in Palo Alto, California;

2.13.3. a reduction by the Company of the Executive's base salary or bonus rate as initially set forth herein or as the same may be increased from time to time, other than a comparable across-the-board reduction in base salary or bonus rate of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital;

2.13.4. any action by the Company (including the elimination of benefit plans without providing substitutes thereof or the reduction of the Executive's benefits thereunder) that would materially diminish the aggregate value of the Executive's fringe benefits as they exist at such time, other than a comparable across-the-board diminution in fringe benefits of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital; or

2.13.5. a material breach of this Agreement by the Company.

2.14. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

2.15. "***Initial B/P Holder***" means a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

2.16. "***Manager***" shall mean any of Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L. T. Wissel.

2.17. "***Managers' Bonus Rate***" shall mean the average for all Managers of X/Y where X is the actual bonus paid for the year in which a termination occurs or the Reference Year, as appropriate, and Y is the target bonus for such year; but including only those Managers who were employed for the entire year; provided that if there were no Managers employed for the entire year, then the Managers' Bonus Rate shall equal the Executive's Bonus Rate.

2.18. "***Management Team***" shall mean the Chairman of the Board (if the Chairman is an officer of the Company), the Chief Executive Officer, and the management employees reporting directly to the Chairman or the Chief Executive Officer, in office immediately prior to a Significant Transaction.

2.19. "***Original Purchase Price***" for each Share shall mean the price paid by the Executive for that Share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction after the date hereof).

2.20. "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

2.21. "***Preferred Shares***" shall mean the shares of the Company's Series A Preferred Stock and Series B Preferred Stock (or Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) that the Executive now owns or hereafter acquires from the Company.

2.22. "***Put***" shall mean the right of the Executive or his/her estate to require the Company to buy Vested Shares pursuant to Section 9.4.

2.23. "***Reference Year***" shall mean the year following the year in which the Executive's employment termination occurs.

2.24. "***Regular Severance***" shall mean:

2.24.1. an amount, payable in accordance with the Company's customary payroll practices, for each month during the Severance Period, equal to one-twelfth of the Executive's base salary in effect at the time of termination, subject to standard deductions and withholdings; plus

2.24.2. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment;

2.24.3. an amount, payable at such time as bonus payments are due to other employees of the Company for the year in which the termination occurs, equal to the sum of (a) one-half of the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination plus (b) the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days remaining in the year of Executive's termination after the date of termination; and

2.24.4. an amount, payable at such time as bonus payments are due to other employees of the Company for the Reference Year, equal to the Annual Bonus Rate for the Reference Year times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination.

2.25. ***"Right of Repurchase"*** shall mean the Company's right to repurchase Unvested Shares pursuant to Section 8.1.

2.26. "***Severance Period***" shall mean 12 months plus one additional month for each quarter, up to a maximum of 12, that the Executive has been employed by the Company in excess of two years. For avoidance of doubt, the maximum Severance Period is two years.

2.27. "***Shares***" shall mean the Common Shares and the Preferred Shares.

2.28. "***Significant Transaction***" shall mean a merger or consolidation of the Company with or into any Person, or an acquisition of all of the business of another Person regardless of form, if and only if, after such merger, consolidation or acquisition, directors of the Company immediately prior to such merger, consolidation or acquisition constitute a majority of the directors of the surviving entity or its parent.

2.29. "***Transactional Agreements***" shall have the meaning assigned in Section 1.

2.30. "***Unvested Founder Shares***" shall mean the Founder Shares held by the Executive that are then subject to the Right of Repurchase.

2.31. "***Vested Shares***" shall mean the Shares held by the Executive that are not subject to the Right of Repurchase.

2.32. "***Vesting Base Date***" shall mean the date(s) set forth on Exhibit A.

3. ***Employment.***

3.1. ***Term***. The Company hereby employs the Executive, and the Executive hereby accepts employment by the Company, upon the terms and conditions set forth in this Agreement. The term of the Executive's employment under the terms and conditions of this Agreement shall continue until the fifth anniversary of the date of this Agreement, subject to the provisions of Section 5.

3.2. ***Title***. The Executive shall have the title of Executive Vice President and Chief Business Officer of the Company and shall also serve in such other capacity or capacities as the Board of Directors of the Company (the "***Board***") may from time to time prescribe. The Executive shall report to the Chief Executive Officer of the Company.

3.3. ***Duties***. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Executive Vice President and Chief Business Officer, consistent with the bylaws of the Company and as required by the Board.

3.4. ***Location***. Unless the Parties otherwise agree in writing, during the term of Executive's employment under this Agreement, the Executive shall perform the services Executive is required to perform pursuant to this Agreement at the Company's offices, located in Palo Alto, California; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

3.5. ***Commitment***. Unless otherwise agreed to in advance by the Company's Board of Directors, during the Executive's employment by the Company, the Executive shall devote substantially all of Executive's business energies, interest, abilities and productive time to the proper and efficient performance of Executive's duties under this Agreement; provided, however, the Executive may engage in other outside business activity listed on Exhibit B hereto. If the Executive wishes to engage in any other outside work, the Executive agrees to notify and consult with the Board of Directors and shall not engage in such other outside work without the prior approval of the Board of Directors.

4. ***Compensation of the Executive.***

4.1. ***Base Salary***. The Company shall pay the Executive a base salary at a rate of three hundred seventy-five thousand dollars ($375,000) per year for calendar year 2004, subject to increases approved by the Board of Directors for calendar years thereafter, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day year.

4.2. ***Bonus***. In addition to Executive's base salary, the Executive will be entitled to receive a bonus determined in accordance with an executive bonus plan established by the Board of Directors. The target bonus for the Executive shall be 50% (subject to increases approved by the Board of Directors) of the annual base salary rate.

4.3. ***Employment Taxes***. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

4.4. ***Benefits***. The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company's executive or key management employees.

4.5. ***Vacation***. Executive shall be eligible for paid time off and holidays in accordance with the Company's standard policies for executive employees.

4.6. ***Expenses***. The Company shall reimburse Executive for all reasonable, documented out-of-pocket business expenses incurred on behalf of the Company in the performance of the Executive's duties.

5. ***Termination.***

5.1. ***Termination by the Company***. The Executive's employment with the Company may be terminated under the following conditions:

5.1.1. ***Death or Disability***. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability.

5.1.2. ***For Cause***. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 5.1.2 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.1.3. ***Without Cause***. The Company may terminate the Executive's employment under this Agreement at any time for any reason other than for "Cause" by delivery of notice of such termination to the Executive. Any notice of termination given pursuant to this Section 5.1.3 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.2. ***Termination By The Executive***. The Executive may terminate the Executive's employment with the Company under the following conditions:

5.2.1. ***For Good Reason***. The Executive may terminate the Executive's employment under this Agreement for Good Reason effective 30 days following delivery of notice to the Company specifying the Good Reason relied upon by the Executive for such termination, provided that such notice is delivered within three (3) months following the occurrence of any event or events constituting Good Reason, and failure of the Company to cure the event which constitutes Good Reason within such 30-day period.

5.2.2. ***Without Good Reason***. The Executive may terminate the Executive's employment hereunder for other than Good Reason effective upon 30 days' notice to the Company.

5.3. ***Termination by Mutual Agreement of the Parties***. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement. Any agreement of termination entered into pursuant to this Section 5.3 shall effect termination as of the date specified in such agreement or, in the event no such date is specified, on the last day of the month in which such agreement is delivered or deemed delivered as provided in Section 15 below.

5.4. ***Termination of Obligations***. In the event of the termination of the Executive's employment hereunder and pursuant to this Section 5, the Company shall have no obligation to pay Executive any base salary, bonus or other compensation or benefits, except as otherwise provided in this Agreement or for benefits due to the Executive (and/or the Executive's dependents) under the terms of the Company's benefit plans or for reimbursement of reasonable, documented business expenses.

6. ***Compensation Upon Termination*.**

6.1. ***Death or Complete Disability***. If the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination and accrued bonus (if any), subject to standard deductions and withholdings, at the rate in effect at the time of termination to Executive and/or Executive's heirs, and, except as provided in Section 9.2, the Company shall thereafter have no further obligations to the Executive and/or Executive's estate under this Agreement.

6.2. ***For Cause or Without Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination, subject to standard deductions and withholdings, at the rate in effect at the time of the notice of termination to Executive, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

6.3. ***Without Cause or For Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (With Good Reason) (other than With Good Reason due to a relocation as described in Section 2.13.2 which event is covered in Section 6.5), the Executive shall be entitled to the Executive's base salary and accrued and unused vacation benefits earned through the date of termination, in each case subject to standard deductions and withholdings. In addition, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.4. ***Following a Significant Transaction***. If the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction, and Executive is employed by the Company on the first anniversary of the effective date of the Significant Transaction, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.4, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5. ***Change of Control Severance***.

6.5.1. If any of the following occur, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Change of Control Severance for the period and in the manner set forth in the definition thereof:

(i) the Executive's employment is terminated pursuant to Section 5.2.1 (With Good Reason) due to a relocation as described in Section 2.13.2;

(ii) the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (With Good Reason) in connection with a Change of Control or Significant Transaction; or

(iii) the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction and, prior to the first anniversary of the effective date of the Significant Transaction, the Executive's employment is terminated by the Company pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (for Good Reason).

6.5.2. In the event there is a Change of Control of the Company and provided Executive is employed by the Company on the first anniversary of the effective date of the Change of Control, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.5.2, at the time of such termination the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5.3. In the event that any payment received or to be received by the Executive pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "***Code***") and (ii) but for this Section 6.5.3, be

subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then, subject to the provisions of Section 6.5.4 hereof, such Payment shall be reduced to the largest amount which would result in no portion of the Payment being subject to the Excise Tax. The determination of any required reduction pursuant to this Section 6.5.3 shall be made by a nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of a change of control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Company (the "***Accounting Firm***") in its discretion. All fees and expenses of the Accounting Firm shall be borne by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. If the Accounting Firm determines that a reduction is required by this Section 6.5.3, the Executive, in his/her discretion, may determine which portion of the Payment shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to him/her. If the Internal Revenue Service (the "***IRS***") determines that a Payment is subject to the Excise Tax, then Section 6.5.4 hereof shall apply, and the enforcement of Section 6.5.4 shall be the exclusive remedy to the Company for a failure by the Executive to reduce the Payment so that no portion thereof is subject to the Excise Tax.

6.5.4. If, notwithstanding any reduction described in Section 6.5.3 (or in the absence of any such reduction), the IRS determines that the Executive is liable for the Excise Tax as a result of the receipt of a Payment, then the Executive shall be obligated to pay back to the Company, within thirty (30) days after final IRS determination, an amount of the Payment equal to the "***Repayment Amount***". The Repayment Amount with respect to a Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Executive's net proceeds with respect to any Payment (after taking into account the payment of the Excise Tax imposed on such Payment) shall be maximized. If the Excise Tax is not eliminated pursuant to this Section 6.5.4, the Executive shall pay the Excise Tax.

7. ***Restrictions on Transfer*.**

Subject to the other provisions hereof, and except as permitted under the Right of First Refusal Agreement or Voting Agreement, Executive shall not sell, pledge or otherwise transfer to any person or entity any Shares or any interest therein until the earlier of (a) the fifth anniversary of the Initial Closing (as defined in the Purchase Agreement), and (b) the closing of a Change of Control.

8. ***Repurchase of Unvested Shares*.**

8.1. ***Repurchase Right***. Except as provided in Section 8.2 below, if the Executive's employment is terminated, the Company has a right (but not an obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Founder Shares held by the Executive for a price per share equal to the Original Purchase Price; provided,

however, that the Right of Repurchase shall expire with respect to 1/48th of the Founder Shares on each monthly anniversary following the Vesting Base Date for such Founder Shares (i.e., so that the Right of Repurchase shall have expired with respect to all of such Common Shares 48 months following the Vesting Base Date).

8.2. ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 8.1,

8.2.1. if, prior to a Change of Control (and not in connection with such Change of Control), the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (For Good Reason) at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares;

8.2.2. if, in connection with a Change of Control or within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares;

8.2.3. if the Executive's employment is terminated as described in Section 6.5.1.(ii) or Section 6.5.1(iii), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares; or

8.2.4. if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares.

8.3. ***Procedure to Exercise Right of Repurchase***. To exercise its Right of Repurchase, the Company must give notice ("Notice of Repurchase") to the Executive (or his/her estate) within 90 days after the date of the Executive's termination and must purchase the Unvested Founder Shares no later than 10 days after the date of the notice.

9. ***Put/Call Rights on Vested Shares.***

9.1. ***Termination For Cause or Without Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to the lower of their (a) Original Purchase Price or (b) Fair Market Value.

9.2. ***Termination due to Death or Complete Disability.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company will have the right (but not the obligation) to Call, and the Executive or Executive's estate will have the right (but not the obligation) to Put, any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.3. ***Termination Without Cause or For Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.4. ***Procedure to Exercise Put/Call Rights***. To exercise its right to Call Vested Shares, the Company must give notice ("***Notice of Put/Call Exercise***") to the Executive (or his/her estate) within the later of (a) 90 days after the date of the Executive's termination and (b) if the Executive purchases the Vested Shares pursuant to an option exercise after the date of the Executive's termination, 30 days after the date of such purchase; and the Company must purchase the Vested Shares no later than 10 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period). To exercise its right to Put Vested Shares, the Executive or his/her estate must give notice ("***Notice of Put/Call Exercise***") to the Company within 395 days after the date of the Executive's termination. The Company will purchase the Vested Shares no later than 30 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period).

9.5. ***Termination of Call Right***. The Company's right to Call the Vested Shares shall terminate upon the closing of a Change of Control.

10. ***Permitted Transfers; Prohibited Transfers.***

10.1. ***Permitted Transfers.*** The restriction on transfer under Section 7 and the Company's right to Call Vested Shares under Section 9.4 shall not apply to:

10.1.1. any transfer of Shares to the ancestors, descendants, spouse or domestic partner of Executive, or to trusts for estate planning purposes for the benefit of such persons or the Executive;

10.1.2. any transfer of Shares by the laws of descent or distribution;

10.1.3. after the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), up to 20% of the Shares then held by the Executive, provided that the Company's Common Stock has been listed on an established stock exchange or a national market system for at least one year;

10.1.4. any transfer of Shares pursuant to, and in accordance with, Section 4 of the Right of First Refusal Agreement or Section 2 of the Voting Agreement; and

10.1.5. any sale of Shares pursuant to an effective registration statement under the Securities Act of 1933, as amended, in accordance with the Investor Rights Agreement.

The Shares transferred under Section 10.1.1 or 10.1.2 shall remain "***Shares***" for all purposes of this Agreement, the transferee shall be treated as the "***Executive***" for all purposes of this Agreement (other than with respect to matters related to employment) and, as a condition to any such transfer, the transferee shall be required to agree in writing to be bound by the provisions of Sections 7, 8 and 9 of this Agreement.

10.2. ***Prohibited Transfers.*** Any sale, pledge, or other transfer of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

11. ***Legend; Stop Transfer Instructions.***

11.1. ***Legend***. Each certificate representing Shares or issued to any person in connection with a transfer pursuant to Section 10.1.1 or 10.1.2 shall be endorsed with the following legend:

"THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN EMPLOYMENT AGREEMENT BY AND BETWEEN THE HOLDER HEREOF (OR AN ASSIGNOR) AND THE COMPANY. A COPY OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

11.2. ***Stop Transfer Instructions***. The Executive agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in Section 11.1 above to enforce the provisions of this Agreement and the Company agrees promptly to do so. The legend shall be removed upon termination of Sections 7, 8 and 9 of this Agreement.

12. ***Survival of Certain Sections.***

Sections 1, 2 and 6 through 25 of this Agreement will survive the termination of Executive's employment under this Agreement.

13. ***Ownership.***

Executive represents and warrants that he or she is the sole legal and beneficial owner of the Shares subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares and that no consent of any other person or entity is required by reason of any community property interest or otherwise to enter into this Agreement and carry out the provisions hereof.

14. ***Market Standoff.***

The Executive hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the registration of a public offering of any securities of the Company under the Securities Act of 1933, as amended (the "***Securities Act***"), the Executive shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Shares or other securities of the Company (a "***Market Standoff***") without the prior written consent of the Company and the underwriter's representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Executive of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the underwriter's representative; provided, however, that the Executive shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Executive has agreed to a Market Standoff. The obligations of the Executive under this Section 14 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

15. ***Escrow of Shares.***

Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit D, until the expiration of Sections 7, 8 and 9 of this Agreement, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed in blank in the form attached hereto as Exhibit E. Upon request by the Company, the Executive will deliver the Shares to the Escrow Agent.

16. ***Assignment and Binding Effect.***

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, no employment obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

17. ***Notices.***

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Executive shall be sent to the address as set forth on the signature page or at such other address as the Executive may designate by ten days advance notice to the Company.

18. ***Governing Law.***

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

19. ***Amendment and Waiver.***

Any provision of this Agreement may be amended or waived only by a written instrument signed by the Company (with approval of a majority of the Board of Directors) and the Executive. Any such waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

20. ***Severability*****.**

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. ***Interpretation; Construction*****.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. ***Attorneys' Fees*****.**

If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

23. ***Cumulative Remedies*****.**

No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

24. ***Further Assurances*****.**

The parties to this Agreement agree to cooperate with the other parties, and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by the other parties, to carry into effect the intent and purpose of this Agreement.

25. ***Counterparts*****.**

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on February 18, 2004, to be effective as of February 18, 2004.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

EXECUTIVE:

/s/ Robert M. Myers
Robert M. Myers

Address: _____
_____

EXHIBIT A

VESTING BASE DATE

For 815,000 shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be April 1, 2003.

For 232,500 shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be December 18, 2003.

For shares of the Company's Common Stock issued upon exercise by the Executive of an option to purchase shares of the Common Stock (an "Option"), the Vesting Base Date shall be the vesting base date set forth in the Option agreement/notice of exercise.

For shares of the Company's Common Stock hereafter acquired by the Executive from the Company, but not issued pursuant to an Option, the Vesting Base Date shall be the date of acquisition of such shares.

EXHIBIT B

OTHER BUSINESS ACTIVITY

Business advisor to Stratagent, Inc.

EXHIBIT C

RELEASE AND WAIVER OF CLAIMS

In consideration of the payments and other benefits set forth in Section 6.4 of the Employment Agreement dated _____, 2004, to be effective as of _____, 200_ to which this form is attached, I, _____, hereby furnish JAZZ PHARMACEUTICALS, INC. (the "***Company***") with the following release and waiver ("***Release and Waiver***").

In exchange for the consideration provided to me by this Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, insurers, Affiliates, and assigns from any and all claims, demands, liabilities, and obligations. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all contractual claims, including claims for breach of contract, wrongful termination, or breach of the covenant of good faith and fair dealing; (3) all tort claims, including claims for fraud, defamation, and emotional distress; and (4) all federal, state, and local statutory claims including claims for discrimination, harassment, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964, as amended, the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967, as amended ("***ADEA***"), or the California Fair Employment and Housing Act. However, this general release does not extend to rights and benefits expressly provided for in the Employment Agreement, under the governing documents for any securities I own of record, and under any agreement, bylaw or statute providing me with indemnification.

Except as provided in the Employment Agreement described above, I acknowledge and agree that the Company already has paid me any and all salary, other wages, bonuses, commissions, incentives, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company I am owed, and that no such further payments, amounts or interests are owed or will be owed.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired.

If I am less than 40 years of age upon execution of this Release and Waiver, I acknowledge that I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have five (5) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier).

I agree neither to file nor to encourage or knowingly permit another to file any claim, charge, grievance, complaint or action for any sort of monetary damages against the Company and other released parties set forth above concerning any matter covered by this Agreement, except as otherwise provided by law.

Date: _____

_____

[TYPE NAME]

EXHIBIT D

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a Delaware corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Executive***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Employment Agreement, dated as of _____, 2004 (the "***Agreement***") between the Company and the Executive (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Executive and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Executive and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Executive irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Executive does hereby irrevocably constitute and appoint you as Executive's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Executive shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Executive, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Executive a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one hundred (100) days after cessation of Executive's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Executive a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Executive, you shall deliver all of the same to Executive and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Executive while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

Dated: _____

EXECUTIVE: [_____]

_____

_____

_____
Executive's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT E

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Employment Agreement between the undersigned ("***Executive***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated _____, 2004 (the "***Agreement***"), Executive hereby sells, assigns and transfers unto the Company _____ _____ (_____) shares of the Common Stock of the Company, standing in Executive's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____
Name: _____

_____
Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Executive.

EXHIBIT 10.5

EMPLOYMENT AGREEMENT

BY AND BETWEEN

JAZZ PHARMACEUTICALS, INC.

AND

MATTHEW K. FUST

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EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is made and entered into on February 18, 2004, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and MATTHEW K. FUST (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an offer letter, dated April 22, 2003 (the "***Offer Letter***").

B. In connection with the Company's sale of Series A Preferred Stock to investors, the Executive and the Company entered into the Amended and Restated Stock Purchase Agreement, dated April 30, 2003 (the "***Stock Agreement***").

C. Certain parties are now proposing to purchase shares of the Company's Series B Preferred Stock and Series B Prime Preferred Stock.

D. The Company and the Executive wish to enter into this Agreement in order to (i) amend and restate the terms and conditions of the Company's retention of the Executive's services and (ii) amend and restate the terms and conditions of certain restrictions on the capital stock of the Company held by the Executive.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. ***Integration.***

This Agreement and the Transactional Agreements constitute the entire agreement between the Company and the Executive regarding the subject matter hereof and thereof and supersede and replace any and all prior oral and written negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof and thereof; provided, however, the Offer Letter, the Stock Agreement, and the Employee Confidential Information and Inventions Agreement between the Company and the Executive shall remain in full force and effect. To the extent this Agreement conflicts with the Offer Letter or the Stock Agreement, this Agreement controls. To the extent this Agreement conflicts with the Employee Confidential Information and Inventions Agreement, the Employee Confidential Information and Inventions

Agreement controls. To the extent this Agreement conflicts with the terms of the Company's employee handbook in effect from time to time, this Agreement controls. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the Preferred Stock Purchase Agreement (the "***Purchase Agreement***") dated January 27, 2004 among the Company and other parties identified therein, the Amended and Restated Investor Rights Agreement (the "***Investor Rights Agreement***") of even date herewith among the Company and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement (the "***Right of First Refusal Agreement***") of even date herewith among the Company and the parties identified therein, and the Amended and Restated Voting Agreement (the "***Voting Agreement***") of even date herewith among the Company and the parties identified therein, each as may be amended in accordance with its terms.

2. ***Definitions.***

For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person.

2.2. "***Annual Bonus Rate for the Termination Year***" shall mean:

2.2.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.2.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the year in which the termination occurs times the Executive's target bonus percentage for the year in which the termination occurs.

2.3. "***Annual Bonus Rate for the Reference Year***" shall mean:

2.3.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.3.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the Reference Year times the Executive's target bonus percentage for the year in which the termination occurs.

2.4. "***Call***" shall mean the right of the Company to buy Vested Shares pursuant to Section 9.4.

2.5. "***Cause***" shall mean the occurrence of any of the following events:

2.5.1. the Executive's willful misconduct or gross negligence that is materially injurious to the Company;

2.5.2. the Executive's conviction or plea of guilty or nolo contendere to any felony or crime involving moral turpitude;

2.5.3. the Executive's commission of any act of fraud with respect to the Company;

2.5.4. the Executive's willful violation of any federal or state securities law; or

2.5.5. the Executive's willful and continued failure to perform the Executive's job duties after 30 days' written notice from the Board setting forth in detail the specific respects in which it believes the Executive has willfully and not substantially performed such job duties and a failure by Executive to cure within such 30-day period if capable of being cured.

2.6. ***"Change of Control"*** means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

2.7. "***Change of Control Severance***" shall mean:

2.7.1. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary in effect at the time of termination times (b) the number of months included in the Severance Period, subject to standard deductions and withholdings;

2.7.2. an amount, payable in one lump sum at the time of termination, equal to the product of the Executive's Bonus Rate times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination;

2.7.3. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary as in effect at the time of termination times (b) the Executive's Bonus Rate times (c) the number of months included in the Severance Period, subject to standard deductions and withholdings; and

2.7.4. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment.

2.8. "***Common Shares***" shall mean the shares of Common Stock that the Executive now owns or hereafter acquires from the Company.

2.9. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance then in force covering employees of the Company. In the event the Company has no policy of disability income insurance in force covering employees of the Company, the term "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board and the Executive, determines to have incapacitated the Executive from performing all of the Executive's usual services for the Company for a period of at least 120 days during any 12 month period (whether or not consecutive) and is expected to continue to incapacitate the Executive thereafter. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

2.10. "***Executive's Bonus Rate***" shall mean:

2.10.1. if the Executive has not previously received an annual bonus, the target bonus percentage for the year in which the termination occurs;

2.10.2. if the Executive has previously received one annual bonus payment at the time of termination, that percentage calculated by dividing the annual bonus actually paid for the year to which the bonus relates by the salary actually paid for such year; or

2.10.3. if the Executive has received more than one annual bonus payment at the time of termination, the average over the prior two years of the percentage calculated by dividing the bonus actually paid for the year to which the bonus relates by the salary actually paid for such year.

2.11. "***Fair Market Value***" shall mean the value of the Shares determined in good faith by the Board of Directors, provided that (a)(i) if the Shares are listed on any established stock exchange or a national market system, their fair market value shall be the average of the closing sales price for the Shares as quoted on such system or exchange (or the largest such exchange) over the 5-trading-day period ending immediately prior to the date of the Notice of Put/Call Exercise, as reported in the Wall Street Journal or similar publication, and (ii) if the Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for the Shares on the date of the Notice of Put/Call Exercise (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices), and (b) if clauses (a)(i) or (a)(ii) are not applicable, the Board of Directors shall apply valuation techniques generally used by reputable investment bankers (without giving effect to any premium that might be paid by a strategic buyer in an acquisition) to determine the value of the Shares as of the date of the Notice of Put/Call Exercise.

2.12. "***Founder Shares***" shall mean shares of Common Stock that the Executive owns immediately prior to the Initial Closing (as defined in the Purchase Agreement).

2.13. "***Good Reason***" shall mean the occurrence of any of the following events without the Executive's written consent:

2.13.1. a substantial diminution by the Company in the nature or status of the Employee's responsibilities or an adverse change in title or reporting level as they exist on the date of this Agreement, or the addition of responsibilities of a nature or status inconsistent with the office of Senior Vice President and Chief Financial Officer of a company such as the Company;

2.13.2. the relocation of the Company's executive offices or principal business location to a point more than 20 miles (or greater distance with the prior written consent of the Executive) from the Company's current facilities in Palo Alto, California;

2.13.3. a reduction by the Company of the Executive's base salary or bonus rate as initially set forth herein or as the same may be increased from time to

time, other than a comparable across-the-board reduction in base salary or bonus rate of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital;

2.13.4. any action by the Company (including the elimination of benefit plans without providing substitutes thereof or the reduction of the Executive's benefits thereunder) that would materially diminish the aggregate value of the Executive's fringe benefits as they exist at such time, other than a comparable across-the-board diminution in fringe benefits of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital; or

2.13.5. a material breach of this Agreement by the Company.

2.14. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

2.15. "***Initial B/P Holder***" means a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

2.16. "***Manager***" shall mean any of Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L. T. Wissel.

2.17. "***Managers' Bonus Rate***" shall mean the average for all Managers of X/Y where X is the actual bonus paid for the year in which a termination occurs or the Reference Year, as appropriate, and Y is the target bonus for such year; but including only those Managers who were employed for the entire year; provided that if there were no Managers employed for the entire year, then the Managers' Bonus Rate shall equal the Executive's Bonus Rate.

2.18. "***Management Team***" shall mean the Chairman of the Board (if the Chairman is an officer of the Company), the Chief Executive Officer, and the management employees reporting directly to the Chairman or the Chief Executive Officer, in office immediately prior to a Significant Transaction.

2.19. "***Original Purchase Price***" for each Share shall mean the price paid by the Executive for that Share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction after the date hereof).

2.20. "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

2.21. "***Preferred Shares***" shall mean the shares of the Company's Series A Preferred Stock and Series B Preferred Stock (or Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) that the Executive now owns or hereafter acquires from the Company.

2.22. "***Put***" shall mean the right of the Executive or his/her estate to require the Company to buy Vested Shares pursuant to Section 9.4.

2.23. "***Reference Year***" shall mean the year following the year in which the Executive's employment termination occurs.

2.24. "***Regular Severance***" shall mean:

2.24.1. an amount, payable in accordance with the Company's customary payroll practices, for each month during the Severance Period, equal to one-twelfth of the Executive's base salary in effect at the time of termination, subject to standard deductions and withholdings; plus

2.24.2. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment;

2.24.3. an amount, payable at such time as bonus payments are due to other employees of the Company for the year in which the termination occurs, equal to the sum of (a) one-half of the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination plus (b) the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days remaining in the year of Executive's termination after the date of termination; and

2.24.4. an amount, payable at such time as bonus payments are due to other employees of the Company for the Reference Year, equal to the Annual Bonus Rate for the Reference Year times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination.

2.25. ***"Right of Repurchase"*** shall mean the Company's right to repurchase Unvested Shares pursuant to Section 8.1.

2.26. "***Severance Period***" shall mean 12 months plus one additional month for each quarter, up to a maximum of 12, that the Executive has been employed by the Company in excess of two years. For avoidance of doubt, the maximum Severance Period is two years.

2.27. "***Shares***" shall mean the Common Shares and the Preferred Shares.

2.28. "***Significant Transaction***" shall mean a merger or consolidation of the Company with or into any Person, or an acquisition of all of the business of another Person regardless of form, if and only if, after such merger, consolidation or acquisition, directors of the Company immediately prior to such merger, consolidation or acquisition constitute a majority of the directors of the surviving entity or its parent.

2.29. "***Transactional Agreements***" shall have the meaning assigned in Section 1.

2.30. "***Unvested Founder Shares***" shall mean the Founder Shares held by the Executive that are then subject to the Right of Repurchase.

2.31. "***Vested Shares***" shall mean the Shares held by the Executive that are not subject to the Right of Repurchase.

2.32. "***Vesting Base Date***" shall mean the date(s) set forth on Exhibit A.

3. ***Employment.***

3.1. ***Term***. The Company hereby employs the Executive, and the Executive hereby accepts employment by the Company, upon the terms and conditions set forth in this Agreement. The term of the Executive's employment under the terms and conditions of this Agreement shall continue until the fifth anniversary of the date of this Agreement, subject to the provisions of Section 5.

3.2. ***Title***. The Executive shall have the title of Senior Vice President and Chief Financial Officer of the Company and shall also serve in such other capacity or capacities as the Board of Directors of the Company (the "***Board***") may from time to time prescribe. The Executive shall report to the Chief Executive Officer of the Company.

3.3. ***Duties***. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Senior Vice President and Chief Financial Officer, consistent with the bylaws of the Company and as required by the Board.

3.4. ***Location***. Unless the Parties otherwise agree in writing, during the term of Executive's employment under this Agreement, the Executive shall perform the services Executive is required to perform pursuant to this Agreement at the Company's offices, located in Palo Alto, California; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

3.5. ***Commitment***. Unless otherwise agreed to in advance by the Company's Board of Directors, during the Executive's employment by the Company, the Executive shall devote substantially all of Executive's business energies, interest, abilities and productive time to the proper and efficient performance of Executive's duties under this Agreement; provided, however, the Executive may engage in other outside business activity listed on Exhibit B hereto. If the Executive wishes to engage in any other outside work, the Executive agrees to notify and consult with the Board of Directors and shall not engage in such other outside work without the prior approval of the Board of Directors.

4. ***Compensation of the Executive.***

4.1. ***Base Salary***. The Company shall pay the Executive a base salary at a rate of three hundred thousand dollars ($300,000) per year for calendar year 2004, subject to increases approved by the Board of Directors for calendar years thereafter, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day year.

4.2. ***Bonus***. In addition to Executive's base salary, the Executive will be entitled to receive a bonus determined in accordance with an executive bonus plan established by the Board of Directors. The target bonus for the Executive shall be 40% (subject to increases approved by the Board of Directors) of the annual base salary rate.

4.3. ***Employment Taxes***. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

4.4. ***Benefits***. The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company's executive or key management employees.

4.5. ***Vacation***. Executive shall be eligible for paid time off and holidays in accordance with the Company's standard policies for executive employees.

4.6. ***Expenses***. The Company shall reimburse Executive for all reasonable, documented out-of-pocket business expenses incurred on behalf of the Company in the performance of the Executive's duties.

5. ***Termination.***

5.1. ***Termination by the Company***. The Executive's employment with the Company may be terminated under the following conditions:

5.1.1. ***Death or Disability***. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability.

5.1.2. ***For Cause***. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 5.1.2 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.1.3. ***Without Cause***. The Company may terminate the Executive's employment under this Agreement at any time for any reason other than for "Cause" by delivery of notice of such termination to the Executive. Any notice of termination given pursuant to this Section 5.1.3 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.2. ***Termination By The Executive***. The Executive may terminate the Executive's employment with the Company under the following conditions:

5.2.1. ***For Good Reason***. The Executive may terminate the Executive's employment under this Agreement for Good Reason effective 30 days following delivery of notice to the Company specifying the Good Reason relied upon by the Executive for such termination, provided that such notice is delivered within three (3) months following the occurrence of any event or events constituting Good Reason, and failure of the Company to cure the event which constitutes Good Reason within such 30-day period.

5.2.2. ***Without Good Reason***. The Executive may terminate the Executive's employment hereunder for other than Good Reason effective upon 30 days' notice to the Company.

5.3. ***Termination by Mutual Agreement of the Parties***. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement. Any agreement of termination entered into pursuant to this Section 5.3 shall effect termination as of the date specified in such agreement or, in the event no such date is specified, on the last day of the month in which such agreement is delivered or deemed delivered as provided in Section 15 below.

5.4. ***Termination of Obligations***. In the event of the termination of the Executive's employment hereunder and pursuant to this Section 5, the Company shall have no obligation to pay Executive any base salary, bonus or other compensation or benefits, except as otherwise provided in this Agreement or for benefits due to the Executive (and/or the Executive's dependents) under the terms of the Company's benefit plans or for reimbursement of reasonable, documented business expenses.

6. ***Compensation Upon Termination.***

6.1. ***Death or Complete Disability***. If the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination and accrued bonus (if any), subject to standard deductions and withholdings, at the rate in effect at the time of termination to Executive and/or Executive's heirs, and, except as provided in Section 9.2, the Company shall thereafter have no further obligations to the Executive and/or Executive's estate under this Agreement.

6.2. ***For Cause or Without Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination, subject to standard deductions and withholdings, at the rate in effect at the time of the notice of termination to Executive, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

6.3. ***Without Cause or For Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (With Good Reason) (other than With Good Reason due to a relocation as described in Section 2.13.2 which event is covered in Section 6.5), the Executive shall be entitled to the Executive's base salary and accrued and unused vacation benefits earned through the date of termination, in each case subject to standard deductions and withholdings. In addition, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.4. ***Following a Significant Transaction***. If the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction, and Executive is employed by the Company on the first anniversary of the effective date of the Significant Transaction, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.4, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5. ***Change of Control Severance.***

6.5.1. If any of the following occur, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Change of Control Severance for the period and in the manner set forth in the definition thereof:

(i) the Executive's employment is terminated pursuant to Section 5.2.1 (With Good Reason) due to a relocation as described in Section 2.13.2;

(ii) the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (With Good Reason) in connection with a Change of Control or Significant Transaction; or

(iii) the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction and, prior to the first anniversary of the effective date of the Significant Transaction, the Executive's employment is terminated by the Company pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (for Good Reason).

6.5.2. In the event there is a Change of Control of the Company and provided Executive is employed by the Company on the first anniversary of the effective date of the Change of Control, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.5.2, at the time of such termination the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5.3. In the event that any payment received or to be received by the Executive pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "***Code***") and (ii) but for this Section 6.5.3, be

subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then, subject to the provisions of Section 6.5.4 hereof, such Payment shall be reduced to the largest amount which would result in no portion of the Payment being subject to the Excise Tax. The determination of any required reduction pursuant to this Section 6.5.3 shall be made by a nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of a change of control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Company (the "***Accounting Firm***") in its discretion. All fees and expenses of the Accounting Firm shall be borne by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. If the Accounting Firm determines that a reduction is required by this Section 6.5.3, the Executive, in his/her discretion, may determine which portion of the Payment shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to him/her. If the Internal Revenue Service (the "***IRS***") determines that a Payment is subject to the Excise Tax, then Section 6.5.4 hereof shall apply, and the enforcement of Section 6.5.4 shall be the exclusive remedy to the Company for a failure by the Executive to reduce the Payment so that no portion thereof is subject to the Excise Tax.

6.5.4. If, notwithstanding any reduction described in Section 6.5.3 (or in the absence of any such reduction), the IRS determines that the Executive is liable for the Excise Tax as a result of the receipt of a Payment, then the Executive shall be obligated to pay back to the Company, within thirty (30) days after final IRS determination, an amount of the Payment equal to the "***Repayment Amount***". The Repayment Amount with respect to a Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Executive's net proceeds with respect to any Payment (after taking into account the payment of the Excise Tax imposed on such Payment) shall be maximized. If the Excise Tax is not eliminated pursuant to this Section 6.5.4, the Executive shall pay the Excise Tax.

7. ***Restrictions on Transfer.***

Subject to the other provisions hereof, and except as permitted under the Right of First Refusal Agreement or Voting Agreement, Executive shall not sell, pledge or otherwise transfer to any person or entity any Shares or any interest therein until the earlier of (a) the fifth anniversary of the Initial Closing (as defined in the Purchase Agreement), and (b) the closing of a Change of Control.

8. ***Repurchase of Unvested Shares.***

8.1. ***Repurchase Right***. Except as provided in Section 8.2 below, if the Executive's employment is terminated, the Company has a right (but not an obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Founder Shares held by the Executive for a price per share equal to the Original Purchase Price; provided,

however, that the Right of Repurchase shall expire with respect to 1/48th of the Founder Shares on each monthly anniversary following the Vesting Base Date for such Founder Shares (i.e., so that the Right of Repurchase shall have expired with respect to all of such Common Shares 48 months following the Vesting Base Date).

8.2. ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 8.1,

8.2.1. if, prior to a Change of Control (and not in connection with such Change of Control), the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (For Good Reason) at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares;

8.2.2. if, in connection with a Change of Control or within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares;

8.2.3. if the Executive's employment is terminated as described in Section 6.5.1.(ii) or Section 6.5.1(iii), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares; or

8.2.4. if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares.

8.3. ***Procedure to Exercise Right of Repurchase***. To exercise its Right of Repurchase, the Company must give notice ("Notice of Repurchase") to the Executive (or his/her estate) within 90 days after the date of the Executive's termination and must purchase the Unvested Founder Shares no later than 10 days after the date of the notice.

9. ***Put/Call Rights on Vested Shares.***

9.1. ***Termination For Cause or Without Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to the lower of their (a) Original Purchase Price or (b) Fair Market Value.

9.2. ***Termination due to Death or Complete Disability.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company will have the right (but not the obligation) to Call, and the Executive or Executive's estate will have the right (but not the obligation) to Put, any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.3. ***Termination Without Cause or For Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.4. ***Procedure to Exercise Put/Call Rights***. To exercise its right to Call Vested Shares, the Company must give notice ("***Notice of Put/Call Exercise***") to the Executive (or his/her estate) within the later of (a) 90 days after the date of the Executive's termination and (b) if the Executive purchases the Vested Shares pursuant to an option exercise after the date of the Executive's termination, 30 days after the date of such purchase; and the Company must purchase the Vested Shares no later than 10 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period). To exercise its right to Put Vested Shares, the Executive or his/her estate must give notice ("***Notice of Put/Call Exercise***") to the Company within 395 days after the date of the Executive's termination. The Company will purchase the Vested Shares no later than 30 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period).

9.5. ***Termination of Call Right***. The Company's right to Call the Vested Shares shall terminate upon the closing of a Change of Control.

10. ***Permitted Transfers; Prohibited Transfers.***

10.1. ***Permitted Transfers.*** The restriction on transfer under Section 7 and the Company's right to Call Vested Shares under Section 9.4 shall not apply to:

10.1.1. any transfer of Shares to the ancestors, descendants, spouse or domestic partner of Executive, or to trusts for estate planning purposes for the benefit of such persons or the Executive;

10.1.2. any transfer of Shares by the laws of descent or distribution;

10.1.3. after the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), up to 20% of the Shares then held by the Executive, provided that the Company's Common Stock has been listed on an established stock exchange or a national market system for at least one year;

10.1.4. any transfer of Shares pursuant to, and in accordance with, Section 4 of the Right of First Refusal Agreement or Section 2 of the Voting Agreement; and

10.1.5. any sale of Shares pursuant to an effective registration statement under the Securities Act of 1933, as amended, in accordance with the Investor Rights Agreement.

The Shares transferred under Section 10.1.1 or 10.1.2 shall remain "***Shares***" for all purposes of this Agreement, the transferee shall be treated as the "***Executive***" for all purposes of this Agreement (other than with respect to matters related to employment) and, as a condition to any such transfer, the transferee shall be required to agree in writing to be bound by the provisions of Sections 7, 8 and 9 of this Agreement.

10.2. ***Prohibited Transfers.*** Any sale, pledge, or other transfer of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

11. ***Legend; Stop Transfer Instructions.***

11.1. ***Legend***. Each certificate representing Shares or issued to any person in connection with a transfer pursuant to Section 10.1.1 or 10.1.2 shall be endorsed with the following legend:

"THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN EMPLOYMENT AGREEMENT BY AND BETWEEN THE HOLDER HEREOF (OR AN ASSIGNOR) AND THE COMPANY. A COPY OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

11.2. ***Stop Transfer Instructions***. The Executive agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in Section 11.1 above to enforce the provisions of this Agreement and the Company agrees promptly to do so. The legend shall be removed upon termination of Sections 7, 8 and 9 of this Agreement.

12. ***Survival of Certain Sections.***

Sections 1, 2 and 6 through 25 of this Agreement will survive the termination of Executive's employment under this Agreement.

13. ***Ownership.***

Executive represents and warrants that he or she is the sole legal and beneficial owner of the Shares subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares and that no consent of any other person or entity is required by reason of any community property interest or otherwise to enter into this Agreement and carry out the provisions hereof.

14. ***Market Standoff.***

The Executive hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the registration of a public offering of any securities of the Company under the Securities Act of 1933, as amended (the "***Securities Act***"), the Executive shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Shares or other securities of the Company (a "***Market Standoff***") without the prior written consent of the Company and the underwriter's representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Executive of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the underwriter's representative; provided, however, that the Executive shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Executive has agreed to a Market Standoff. The obligations of the Executive under this Section 14 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

15. ***Escrow of Shares.***

Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit D, until the expiration of Sections 7, 8 and 9 of this Agreement, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed in blank in the form attached hereto as Exhibit E. Upon request by the Company, the Executive will deliver the Shares to the Escrow Agent.

16. ***Assignment and Binding Effect.***

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, no employment obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

17. ***Notices.***

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Executive shall be sent to the address as set forth on the signature page or at such other address as the Executive may designate by ten days advance notice to the Company.

18. ***Governing Law.***

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

19. ***Amendment and Waiver.***

Any provision of this Agreement may be amended or waived only by a written instrument signed by the Company (with approval of a majority of the Board of Directors) and the Executive. Any such waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

20. ***Severability.***

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. ***Interpretation; Construction.***

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. ***Attorneys' Fees.***

If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

23. ***Cumulative Remedies.***

No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

24. ***Further Assurances.***

The parties to this Agreement agree to cooperate with the other parties, and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by the other parties, to carry into effect the intent and purpose of this Agreement.

25. ***Counterparts.***

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on February 18, 2004, to be effective as of February 18, 2004.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

EXECUTIVE:

/s/ Matthew K. Fust
Matthew K. Fust

Address: _____
_____

EXHIBIT A

VESTING BASE DATE

For shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be April 17, 2003.

For shares of the Company's Common Stock issued upon exercise by the Executive of an option to purchase shares of the Common Stock (an "Option"), the Vesting Base Date shall be the vesting base date set forth in the Option agreement/notice of exercise.

For shares of the Company's Common Stock hereafter acquired by the Executive from the Company, but not issued pursuant to an Option, the Vesting Base Date shall be the date of acquisition of such shares.

EXHIBIT B

OTHER BUSINESS ACTIVITY

Non-profit organizations:

Board of Directors of Project Inform.

Other nonprofit Boards of Directors from time to time.

EXHIBIT C

RELEASE AND WAIVER OF CLAIMS

In consideration of the payments and other benefits set forth in Section 6.4 of the Employment Agreement dated _____, 2004, to be effective as of _____, 200_ to which this form is attached, I, _____, hereby furnish JAZZ PHARMACEUTICALS, INC. (the "***Company***") with the following release and waiver ("***Release and Waiver***").

In exchange for the consideration provided to me by this Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, insurers, Affiliates, and assigns from any and all claims, demands, liabilities, and obligations. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all contractual claims, including claims for breach of contract, wrongful termination, or breach of the covenant of good faith and fair dealing; (3) all tort claims, including claims for fraud, defamation, and emotional distress; and (4) all federal, state, and local statutory claims including claims for discrimination, harassment, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964, as amended, the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967, as amended ("***ADEA***"), or the California Fair Employment and Housing Act. However, this general release does not extend to rights and benefits expressly provided for in the Employment Agreement, under the governing documents for any securities I own of record, and under any agreement, bylaw or statute providing me with indemnification.

Except as provided in the Employment Agreement described above, I acknowledge and agree that the Company already has paid me any and all salary, other wages, bonuses, commissions, incentives, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company I am owed, and that no such further payments, amounts or interests are owed or will be owed.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired.

If I am less than 40 years of age upon execution of this Release and Waiver, I acknowledge that I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have five (5) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier).

I agree neither to file nor to encourage or knowingly permit another to file any claim, charge, grievance, complaint or action for any sort of monetary damages against the Company and other released parties set forth above concerning any matter covered by this Agreement, except as otherwise provided by law.

Date: _____

_____

[TYPE NAME]

EXHIBIT D

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a Delaware corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Executive***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Employment Agreement, dated as of _____, 2004 (the "***Agreement***") between the Company and the Executive (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Executive and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Executive and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Executive irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Executive does hereby irrevocably constitute and appoint you as Executive's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Executive shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Executive, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Executive a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one hundred (100) days after cessation of Executive's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Executive a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Executive, you shall deliver all of the same to Executive and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Executive while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

Dated: _____

EXECUTIVE: [_____]

_____

_____

_____
Executive's Spouse (*if applicable*)

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT E

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Employment Agreement between the undersigned ("***Executive***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated _____, 2004 (the "***Agreement***"), Executive hereby sells, assigns and transfers unto the Company _____ _____ (_____) shares of the Common Stock of the Company, standing in Executive's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____
Name: _____

_____
Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Executive.

Exhibit 10.6

EMPLOYMENT AGREEMENT

BY AND BETWEEN

JAZZ PHARMACEUTICALS, INC.

AND

CAROL A. GAMBLE

TABLE OF CONTENTS

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is made and entered into on February 18, 2004, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and CAROL A. GAMBLE (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an offer letter, dated April 17, 2003 (the "***Offer Letter***").

B. In connection with the Company's sale of Series A Preferred Stock to investors, the Executive and the Company entered into the Amended and Restated Stock Purchase Agreement, dated April 30, 2003 (the "***Stock Agreement***").

C. Certain parties are now proposing to purchase shares of the Company's Series B Preferred Stock and Series B Prime Preferred Stock.

D. The Company and the Executive wish to enter into this Agreement in order to (i) amend and restate the terms and conditions of the Company's retention of the Executive's services and (ii) amend and restate the terms and conditions of certain restrictions on the capital stock of the Company held by the Executive.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. ***Integration.***

This Agreement and the Transactional Agreements constitute the entire agreement between the Company and the Executive regarding the subject matter hereof and thereof and supersede and replace any and all prior oral and written negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof and thereof; provided, however, the Offer Letter, the Stock Agreement, and the Employee Confidential Information and Inventions Agreement between the Company and the Executive shall remain in full force and effect. To the extent this Agreement conflicts with the Offer Letter or the Stock Agreement, this Agreement controls. To the extent this Agreement conflicts with the Employee Confidential Information and Inventions Agreement, the Employee Confidential Information and Inventions Agreement controls. To the extent this Agreement conflicts with the terms of the Company's employee handbook in effect from time to time, this Agreement controls. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the

Preferred Stock Purchase Agreement (the "***Purchase Agreement***") dated January 27, 2004 among the Company and other parties identified therein, the Amended and Restated Investor Rights Agreement (the "***Investor Rights Agreement***") of even date herewith among the Company and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement (the "***Right of First Refusal Agreement***") of even date herewith among the Company and the parties identified therein, and the Amended and Restated Voting Agreement (the "***Voting Agreement***") of even date herewith among the Company and the parties identified therein, each as may be amended in accordance with its terms.

2. ***Definitions.***

For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person.

2.2. "***Annual Bonus Rate for the Termination Year***" shall mean:

2.2.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.2.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the year in which the termination occurs times the Executive's target bonus percentage for the year in which the termination occurs.

2.3. "***Annual Bonus Rate for the Reference Year***" shall mean:

2.3.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.3.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the Reference Year times the Executive's target bonus percentage for the year in which the termination occurs.

2.4. "***Call***" shall mean the right of the Company to buy Vested Shares pursuant to Section 9.4.

2.5. "***Cause***" shall mean the occurrence of any of the following events:

2.5.1. the Executive's willful misconduct or gross negligence that is materially injurious to the Company;

2.5.2. the Executive's conviction or plea of guilty or nolo contendere to any felony or crime involving moral turpitude;

2.5.3. the Executive's commission of any act of fraud with respect to the Company;

2.5.4. the Executive's willful violation of any federal or state securities law; or

2.5.5. the Executive's willful and continued failure to perform the Executive's job duties after 30 days' written notice from the Board setting forth in detail the specific respects in which it believes the Executive has willfully and not substantially performed such job duties and a failure by Executive to cure within such 30-day period if capable of being cured.

2.6. ***"Change of Control"*** means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

2.7. "***Change of Control Severance***" shall mean:

2.7.1. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary in effect at the time of termination times (b) the number of months included in the Severance Period, subject to standard deductions and withholdings;

2.7.2. an amount, payable in one lump sum at the time of termination, equal to the product of the Executive's Bonus Rate times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination;

2.7.3. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary as in effect at the time of termination times (b) the Executive's Bonus Rate times (c) the number of months included in the Severance Period, subject to standard deductions and withholdings; and

2.7.4. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment.

2.8. "***Common Shares***" shall mean the shares of Common Stock that the Executive now owns or hereafter acquires from the Company.

2.9. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance then in force covering employees of the Company. In the event the Company has no policy of disability income insurance in force covering employees of the Company, the term "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board and the Executive, determines to have incapacitated the Executive from performing all of the Executive's usual services for the Company for a period of at least 120 days during any 12 month period (whether or not consecutive) and is expected to continue to incapacitate the Executive thereafter. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

2.10. *"**Executive's Bonus Rate**"* shall mean:

2.10.1. if the Executive has not previously received an annual bonus, the target bonus percentage for the year in which the termination occurs;

2.10.2. if the Executive has previously received one annual bonus payment at the time of termination, that percentage calculated by dividing the annual bonus actually paid for the year to which the bonus relates by the salary actually paid for such year; or

2.10.3. if the Executive has received more than one annual bonus payment at the time of termination, the average over the prior two years of the percentage calculated by dividing the bonus actually paid for the year to which the bonus relates by the salary actually paid for such year.

2.11. "***Fair Market Value***" shall mean the value of the Shares determined in good faith by the Board of Directors, provided that (a)(i) if the Shares are listed on any established stock exchange or a national market system, their fair market value shall be the average of the closing sales price for the Shares as quoted on such system or exchange (or the largest such exchange) over the 5-trading-day period ending immediately prior to the date of the Notice of Put/Call Exercise, as reported in the Wall Street Journal or similar publication, and (ii) if the Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for the Shares on the date of the Notice of Put/Call Exercise (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices), and (b) if clauses (a)(i) or (a)(ii) are not applicable, the Board of Directors shall apply valuation techniques generally used by reputable investment bankers (without giving effect to any premium that might be paid by a strategic buyer in an acquisition) to determine the value of the Shares as of the date of the Notice of Put/Call Exercise.

2.12. "***Founder Shares***" shall mean shares of Common Stock that the Executive owns immediately prior to the Initial Closing (as defined in the Purchase Agreement).

2.13. "***Good Reason***" shall mean the occurrence of any of the following events without the Executive's written consent:

2.13.1. a substantial diminution by the Company in the nature or status of the Employee's responsibilities or an adverse change in title or reporting level as they exist on the date of this Agreement, or the addition of responsibilities of a nature or status inconsistent with the office of Senior Vice President, General Counsel and Corporate Secretary of a company such as the Company;

2.13.2. the relocation of the Company's executive offices or principal business location to a point more than 20 miles (or greater distance with the prior written consent of the Executive) from the Company's current facilities in Palo Alto, California;

2.13.3. a reduction by the Company of the Executive's base salary or bonus rate as initially set forth herein or as the same may be increased from time to time, other than a comparable across-the-board reduction in base salary or bonus rate of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital;

2.13.4. any action by the Company (including the elimination of benefit plans without providing substitutes thereof or the reduction of the Executive's benefits thereunder) that would materially diminish the aggregate value of the Executive's fringe benefits as they exist at such time, other than a comparable across-the-board diminution in fringe benefits of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital; or

2.13.5. a material breach of this Agreement by the Company.

2.14. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

2.15. "***Initial B/P Holder***" means a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

2.16. "***Manager***" shall mean any of Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L. T. Wissel.

2.17. "***Managers' Bonus Rate***" shall mean the average for all Managers of X/Y where X is the actual bonus paid for the year in which a termination occurs or the Reference Year, as appropriate, and Y is the target bonus for such year; but including only those Managers who were employed for the entire year; provided that if there were no Managers employed for the entire year, then the Managers' Bonus Rate shall equal the Executive's Bonus Rate.

2.18. "***Management Team***" shall mean the Chairman of the Board (if the Chairman is an officer of the Company), the Chief Executive Officer, and the management employees reporting directly to the Chairman or the Chief Executive Officer, in office immediately prior to a Significant Transaction.

2.19. "***Original Purchase Price***" for each Share shall mean the price paid by the Executive for that Share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction after the date hereof).

2.20. "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

2.21. "***Preferred Shares***" shall mean the shares of the Company's Series A Preferred Stock and Series B Preferred Stock (or Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) that the Executive now owns or hereafter acquires from the Company.

2.22. "***Put***" shall mean the right of the Executive or his/her estate to require the Company to buy Vested Shares pursuant to Section 9.4.

2.23. "***Reference Year***" shall mean the year following the year in which the Executive's employment termination occurs.

2.24. "***Regular Severance***" shall mean:

2.24.1. an amount, payable in accordance with the Company's customary payroll practices, for each month during the Severance Period, equal to one-twelfth of the Executive's base salary in effect at the time of termination, subject to standard deductions and withholdings; plus

2.24.2. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment;

2.24.3. an amount, payable at such time as bonus payments are due to other employees of the Company for the year in which the termination occurs, equal to the sum of (a) one-half of the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination plus (b) the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days remaining in the year of Executive's termination after the date of termination; and

2.24.4. an amount, payable at such time as bonus payments are due to other employees of the Company for the Reference Year, equal to the Annual Bonus Rate for the Reference Year times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination.

2.25. ***"Right of Repurchase"*** shall mean the Company's right to repurchase Unvested Shares pursuant to Section 8.1.

2.26. "***Severance Period***" shall mean 12 months plus one additional month for each quarter, up to a maximum of 12, that the Executive has been employed by the Company in excess of two years. For avoidance of doubt, the maximum Severance Period is two years.

2.27. "***Shares***" shall mean the Common Shares and the Preferred Shares.

2.28. "***Significant Transaction***" shall mean a merger or consolidation of the Company with or into any Person, or an acquisition of all of the business of another Person regardless of form, if and only if, after such merger, consolidation or acquisition, directors of the Company immediately prior to such merger, consolidation or acquisition constitute a majority of the directors of the surviving entity or its parent.

2.29. "***Transactional Agreements***" shall have the meaning assigned in Section 1.

2.30. "***Unvested Founder Shares***" shall mean the Founder Shares held by the Executive that are then subject to the Right of Repurchase.

2.31. "***Vested Shares***" shall mean the Shares held by the Executive that are not subject to the Right of Repurchase.

2.32. "***Vesting Base Date***" shall mean the date(s) set forth on Exhibit A.

3. ***Employment.***

3.1. ***Term***. The Company hereby employs the Executive, and the Executive hereby accepts employment by the Company, upon the terms and conditions set forth in this Agreement. The term of the Executive's employment under the terms and conditions of this Agreement shall continue until the fifth anniversary of the date of this Agreement, subject to the provisions of Section 5.

3.2. ***Title***. The Executive shall have the title of Senior Vice President, General Counsel and Corporate Secretary of the Company and shall also serve in such other capacity or capacities as the Board of Directors of the Company (the "***Board***") may from time to time prescribe. The Executive shall report to the Chief Executive Officer of the Company.

3.3. ***Duties***. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Senior Vice President, General Counsel and Corporate Secretary, consistent with the bylaws of the Company and as required by the Board.

3.4. ***Location***. Unless the Parties otherwise agree in writing, during the term of Executive's employment under this Agreement, the Executive shall perform the services Executive is required to perform pursuant to this Agreement at the Company's offices, located in Palo Alto, California; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

3.5. ***Commitment***. Unless otherwise agreed to in advance by the Company's Board of Directors, during the Executive's employment by the Company, the Executive shall devote substantially all of Executive's business energies, interest, abilities and productive time to the proper and efficient performance of Executive's duties under this Agreement; provided, however, the Executive may engage in other outside business activity listed on Exhibit B hereto. If the Executive wishes to engage in any other outside work, the Executive agrees to notify and consult with the Board of Directors and shall not engage in such other outside work without the prior approval of the Board of Directors.

4. ***Compensation of the Executive.***

4.1. ***Base Salary***. The Company shall pay the Executive a base salary at a rate of three hundred thousand dollars ($300,000) per year for calendar year 2004, subject to increases approved by the Board of Directors for calendar years thereafter, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day year.

4.2. ***Bonus***. In addition to Executive's base salary, the Executive will be entitled to receive a bonus determined in accordance with an executive bonus plan established by the Board of Directors. The target bonus for the Executive shall be 40% (subject to increases approved by the Board of Directors) of the annual base salary rate.

4.3. ***Employment Taxes***. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

4.4. ***Benefits***. The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company's executive or key management employees.

4.5. ***Vacation***. Executive shall be eligible for paid time off and holidays in accordance with the Company's standard policies for executive employees.

4.6. ***Expenses***. The Company shall reimburse Executive for all reasonable, documented out-of-pocket business expenses incurred on behalf of the Company in the performance of the Executive's duties.

5. ***Termination.***

5.1. ***Termination by the Company***. The Executive's employment with the Company may be terminated under the following conditions:

5.1.1. ***Death or Disability***. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability.

5.1.2. ***For Cause***. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 5.1.2 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.1.3. ***Without Cause***. The Company may terminate the Executive's employment under this Agreement at any time for any reason other than for "Cause" by delivery of notice of such termination to the Executive. Any notice of termination given pursuant to this Section 5.1.3 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.2. ***Termination By The Executive***. The Executive may terminate the Executive's employment with the Company under the following conditions:

5.2.1. ***For Good Reason***. The Executive may terminate the Executive's employment under this Agreement for Good Reason effective 30 days following delivery of notice to the Company specifying the Good Reason relied upon by the Executive for such termination, provided that such notice is delivered within three (3) months following the occurrence of any event or events constituting Good Reason, and failure of the Company to cure the event which constitutes Good Reason within such 30-day period.

5.2.2. ***Without Good Reason***. The Executive may terminate the Executive's employment hereunder for other than Good Reason effective upon 30 days' notice to the Company.

5.3. ***Termination by Mutual Agreement of the Parties***. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement. Any agreement of termination entered into pursuant to this Section 5.3 shall effect termination as of the date specified in such agreement or, in the event no such date is specified, on the last day of the month in which such agreement is delivered or deemed delivered as provided in Section 15 below.

5.4. ***Termination of Obligations***. In the event of the termination of the Executive's employment hereunder and pursuant to this Section 5, the Company shall have no obligation to pay Executive any base salary, bonus or other compensation or benefits, except as otherwise provided in this Agreement or for benefits due to the Executive (and/or the Executive's dependents) under the terms of the Company's benefit plans or for reimbursement of reasonable, documented business expenses.

6. ***Compensation Upon Termination.***

6.1. ***Death or Complete Disability***. If the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination and accrued bonus (if any), subject to standard deductions and withholdings, at the rate in effect at the time of termination to Executive and/or Executive's heirs, and, except as provided in Section 9.2, the Company shall thereafter have no further obligations to the Executive and/or Executive's estate under this Agreement.

6.2. ***For Cause or Without Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination, subject to standard deductions and withholdings, at the rate in effect at the time of the notice of termination to Executive, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

6.3. ***Without Cause or For Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (With Good Reason) (other than With Good Reason due to a relocation as described in Section 2.13.2 which event is covered in Section 6.5), the Executive shall be entitled to the Executive's base salary and accrued and unused vacation benefits earned through the date of termination, in each case subject to standard deductions and withholdings. In addition, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.4. ***Following a Significant Transaction***. If the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction, and Executive is employed by the Company on the first anniversary of the effective date of the Significant Transaction, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.4, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5. ***Change of Control Severance.***

6.5.1. If any of the following occur, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Change of Control Severance for the period and in the manner set forth in the definition thereof:

(i) the Executive's employment is terminated pursuant to Section 5.2.1 (With Good Reason) due to a relocation as described in Section 2.13.2;

(ii) the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (With Good Reason) in connection with a Change of Control or Significant Transaction; or

(iii) the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction and, prior to the first anniversary of the effective date of the Significant Transaction, the Executive's employment is terminated by the Company pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (for Good Reason).

6.5.2. In the event there is a Change of Control of the Company and provided Executive is employed by the Company on the first anniversary of the effective date of the Change of Control, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.5.2, at the time of such termination the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5.3. In the event that any payment received or to be received by the Executive pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "***Code***") and (ii) but for this Section 6.5.3, be

subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then, subject to the provisions of Section 6.5.4 hereof, such Payment shall be reduced to the largest amount which would result in no portion of the Payment being subject to the Excise Tax. The determination of any required reduction pursuant to this Section 6.5.3 shall be made by a nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of a change of control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Company (the "***Accounting Firm***") in its discretion. All fees and expenses of the Accounting Firm shall be borne by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. If the Accounting Firm determines that a reduction is required by this Section 6.5.3, the Executive, in his/her discretion, may determine which portion of the Payment shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to him/her. If the Internal Revenue Service (the "***IRS***") determines that a Payment is subject to the Excise Tax, then Section 6.5.4 hereof shall apply, and the enforcement of Section 6.5.4 shall be the exclusive remedy to the Company for a failure by the Executive to reduce the Payment so that no portion thereof is subject to the Excise Tax.

6.5.4. If, notwithstanding any reduction described in Section 6.5.3 (or in the absence of any such reduction), the IRS determines that the Executive is liable for the Excise Tax as a result of the receipt of a Payment, then the Executive shall be obligated to pay back to the Company, within thirty (30) days after final IRS determination, an amount of the Payment equal to the "***Repayment Amount***". The Repayment Amount with respect to a Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Executive's net proceeds with respect to any Payment (after taking into account the payment of the Excise Tax imposed on such Payment) shall be maximized. If the Excise Tax is not eliminated pursuant to this Section 6.5.4, the Executive shall pay the Excise Tax.

7. ***Restrictions on Transfer.***

Subject to the other provisions hereof, and except as permitted under the Right of First Refusal Agreement or Voting Agreement, Executive shall not sell, pledge or otherwise transfer to any person or entity any Shares or any interest therein until the earlier of (a) the fifth anniversary of the Initial Closing (as defined in the Purchase Agreement), and (b) the closing of a Change of Control.

8. ***Repurchase of Unvested Shares.***

8.1. ***Repurchase Right***. Except as provided in Section 8.2 below, if the Executive's employment is terminated, the Company has a right (but not an obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Founder Shares held by the Executive for a price per share equal to the Original Purchase Price; provided,

however, that the Right of Repurchase shall expire with respect to 1/48th of the Founder Shares on each monthly anniversary following the Vesting Base Date for such Founder Shares (i.e., so that the Right of Repurchase shall have expired with respect to all of such Common Shares 48 months following the Vesting Base Date).

8.2. ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 8.1,

8.2.1. if, prior to a Change of Control (and not in connection with such Change of Control), the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (For Good Reason) at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares;

8.2.2. if, in connection with a Change of Control or within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares;

8.2.3. if the Executive's employment is terminated as described in Section 6.5.1.(ii) or Section 6.5.1(iii), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares; or

8.2.4. if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares.

8.3. ***Procedure to Exercise Right of Repurchase***. To exercise its Right of Repurchase, the Company must give notice ("Notice of Repurchase") to the Executive (or his/her estate) within 90 days after the date of the Executive's termination and must purchase the Unvested Founder Shares no later than 10 days after the date of the notice.

9. ***Put/Call Rights on Vested Shares.***

9.1. ***Termination For Cause or Without Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to the lower of their (a) Original Purchase Price or (b) Fair Market Value.

9.2. ***Termination due to Death or Complete Disability.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company will have the right (but not the obligation) to Call, and the Executive or Executive's estate will have the right (but not the obligation) to Put, any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.3. ***Termination Without Cause or For Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.4. ***Procedure to Exercise Put/Call Rights***. To exercise its right to Call Vested Shares, the Company must give notice ("***Notice of Put/Call Exercise***") to the Executive (or his/her estate) within the later of (a) 90 days after the date of the Executive's termination and (b) if the Executive purchases the Vested Shares pursuant to an option exercise after the date of the Executive's termination, 30 days after the date of such purchase; and the Company must purchase the Vested Shares no later than 10 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period). To exercise its right to Put Vested Shares, the Executive or his/her estate must give notice ("***Notice of Put/Call Exercise***") to the Company within 395 days after the date of the Executive's termination. The Company will purchase the Vested Shares no later than 30 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period).

9.5. ***Termination of Call Right***. The Company's right to Call the Vested Shares shall terminate upon the closing of a Change of Control.

10. ***Permitted Transfers; Prohibited Transfers.***

10.1. ***Permitted Transfers.*** The restriction on transfer under Section 7 and the Company's right to Call Vested Shares under Section 9.4 shall not apply to:

10.1.1. any transfer of Shares to the ancestors, descendants, spouse or domestic partner of Executive, or to trusts for estate planning purposes for the benefit of such persons or the Executive;

10.1.2. any transfer of Shares by the laws of descent or distribution;

10.1.3. after the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), up to 20% of the Shares then held by the Executive, provided that the Company's Common Stock has been listed on an established stock exchange or a national market system for at least one year;

10.1.4. any transfer of Shares pursuant to, and in accordance with, Section 4 of the Right of First Refusal Agreement or Section 2 of the Voting Agreement; and

10.1.5. any sale of Shares pursuant to an effective registration statement under the Securities Act of 1933, as amended, in accordance with the Investor Rights Agreement.

The Shares transferred under Section 10.1.1 or 10.1.2 shall remain "***Shares***" for all purposes of this Agreement, the transferee shall be treated as the "***Executive***" for all purposes of this Agreement (other than with respect to matters related to employment) and, as a condition to any such transfer, the transferee shall be required to agree in writing to be bound by the provisions of Sections 7, 8 and 9 of this Agreement.

10.2. ***Prohibited Transfers.*** Any sale, pledge, or other transfer of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

11. ***Legend; Stop Transfer Instructions.***

11.1. ***Legend***. Each certificate representing Shares or issued to any person in connection with a transfer pursuant to Section 10.1.1 or 10.1.2 shall be endorsed with the following legend:

"THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN EMPLOYMENT AGREEMENT BY AND BETWEEN THE HOLDER HEREOF (OR AN ASSIGNOR) AND THE COMPANY. A COPY OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

11.2. ***Stop Transfer Instructions***. The Executive agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in Section 11.1 above to enforce the provisions of this Agreement and the Company agrees promptly to do so. The legend shall be removed upon termination of Sections 7, 8 and 9 of this Agreement.

12. ***Survival of Certain Sections.***

Sections 1, 2 and 6 through 25 of this Agreement will survive the termination of Executive's employment under this Agreement.

13. ***Ownership.***

Executive represents and warrants that he or she is the sole legal and beneficial owner of the Shares subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares and that no consent of any other person or entity is required by reason of any community property interest or otherwise to enter into this Agreement and carry out the provisions hereof.

14. ***Market Standoff.***

The Executive hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the registration of a public offering of any securities of the Company under the Securities Act of 1933, as amended (the "***Securities Act***"), the Executive shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Shares or other securities of the Company (a "***Market Standoff***") without the prior written consent of the Company and the underwriter's representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Executive of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the underwriter's representative; provided, however, that the Executive shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Executive has agreed to a Market Standoff. The obligations of the Executive under this Section 14 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

15. ***Escrow of Shares.***

Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit D, until the expiration of Sections 7, 8 and 9 of this Agreement, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed in blank in the form attached hereto as Exhibit E. Upon request by the Company, the Executive will deliver the Shares to the Escrow Agent.

16. ***Assignment and Binding Effect.***

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, no employment obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

17. ***Notices.***

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Executive shall be sent to the address as set forth on the signature page or at such other address as the Executive may designate by ten days advance notice to the Company.

18. ***Governing Law.***

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

19. ***Amendment and Waiver.***

Any provision of this Agreement may be amended or waived only by a written instrument signed by the Company (with approval of a majority of the Board of Directors) and the Executive. Any such waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

20. ***Severability.***

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. ***Interpretation; Construction.***

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. ***Attorneys' Fees.***

If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

23. ***Cumulative Remedies.***

No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

24. ***Further Assurances.***

The parties to this Agreement agree to cooperate with the other parties, and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by the other parties, to carry into effect the intent and purpose of this Agreement.

25. ***Counterparts.***

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on February 18, 2004, to be effective as of February 18, 2004.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

EXECUTIVE:

/s/ Carol A. Gamble
Carol A. Gamble
Address: _____
_____

EXHIBIT A

VESTING BASE DATE

For shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be April 17, 2003.

For shares of the Company's Common Stock issued upon exercise by the Executive of an option to purchase shares of the Common Stock (an "Option"), the Vesting Base Date shall be the vesting base date set forth in the Option agreement/notice of exercise.

For shares of the Company's Common Stock hereafter acquired by the Executive from the Company, but not issued pursuant to an Option, the Vesting Base Date shall be the date of acquisition of such shares.

EXHIBIT B

OTHER BUSINESS ACTIVITY

Non-profit Boards of Directors from time to time.

EXHIBIT C

RELEASE AND WAIVER OF CLAIMS

In consideration of the payments and other benefits set forth in Section 6.4 of the Employment Agreement dated _____, 2004, to be effective as of _____, 200_ to which this form is attached, I, _____, hereby furnish JAZZ PHARMACEUTICALS, INC. (the "***Company***") with the following release and waiver ("***Release and Waiver***").

In exchange for the consideration provided to me by this Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, insurers, Affiliates, and assigns from any and all claims, demands, liabilities, and obligations. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all contractual claims, including claims for breach of contract, wrongful termination, or breach of the covenant of good faith and fair dealing; (3) all tort claims, including claims for fraud, defamation, and emotional distress; and (4) all federal, state, and local statutory claims including claims for discrimination, harassment, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964, as amended, the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967, as amended ("***ADEA***"), or the California Fair Employment and Housing Act. However, this general release does not extend to rights and benefits expressly provided for in the Employment Agreement, under the governing documents for any securities I own of record, and under any agreement, bylaw or statute providing me with indemnification.

Except as provided in the Employment Agreement described above, I acknowledge and agree that the Company already has paid me any and all salary, other wages, bonuses, commissions, incentives, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company I am owed, and that no such further payments, amounts or interests are owed or will be owed.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired.

If I am less than 40 years of age upon execution of this Release and Waiver, I acknowledge that I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have five (5) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier).

I agree neither to file nor to encourage or knowingly permit another to file any claim, charge, grievance, complaint or action for any sort of monetary damages against the Company and other released parties set forth above concerning any matter covered by this Agreement, except as otherwise provided by law.

Date: _____ _____

[TYPE NAME]

EXHIBIT D

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a Delaware corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Executive***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Employment Agreement, dated as of _____, 2004 (the "***Agreement***") between the Company and the Executive (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Executive and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Executive and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Executive irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Executive does hereby irrevocably constitute and appoint you as Executive's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Executive shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Executive, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Executive a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one hundred (100) days after cessation of Executive's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Executive a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Executive, you shall deliver all of the same to Executive and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Executive while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

Dated: _____

EXECUTIVE: [_____]

_____
_____

_____
Executive's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT E

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Employment Agreement between the undersigned ("***Executive***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated _____, 2004 (the "***Agreement***"), Executive hereby sells, assigns and transfers unto the Company _____ _____ (_____) shares of the Common Stock of the Company, standing in Executive's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Executive.

EXHIBIT 10.7

EMPLOYMENT AGREEMENT

BY AND BETWEEN

JAZZ PHARMACEUTICALS, INC.

AND

JANNE L.T. WISSEL

TABLE OF CONTENTS

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is made and entered into on February 18, 2004, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and JANNE L.T. WISSEL (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an offer letter, dated May 29, 2003 (the "***Offer Letter***").

B. The Executive and the Company entered into an Option Exercise and Stock Purchase Agreement, dated October 14, 2003 (the "***Stock Agreement***").

C. Certain parties are now proposing to purchase shares of the Company's Series B Preferred Stock and Series B Prime Preferred Stock.

D. The Company and the Executive wish to enter into this Agreement in order to (i) amend and restate the terms and conditions of the Company's retention of the Executive's services and (ii) amend and restate the terms and conditions of certain restrictions on the capital stock of the Company held by the Executive.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. ***Integration.***

This Agreement and the Transactional Agreements constitute the entire agreement between the Company and the Executive regarding the subject matter hereof and thereof and supersede and replace any and all prior oral and written negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof and thereof; provided, however, the Offer Letter, the Stock Agreement, and the Employee Confidential Information and Inventions Agreement between the Company and the Executive shall remain in full force and effect. To the extent this Agreement conflicts with the Offer Letter or the Stock Agreement, this Agreement controls. To the extent this Agreement conflicts with the Employee Confidential Information and Inventions Agreement, the Employee Confidential Information and Inventions Agreement controls. To the extent this Agreement conflicts with the terms of the Company's employee handbook in effect from time to time, this Agreement controls. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the Preferred Stock Purchase Agreement (the "***Purchase Agreement***") dated January 27,

2004 among the Company and other parties identified therein, the Amended and Restated Investor Rights Agreement (the "***Investor Rights Agreement***") of even date herewith among the Company and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement (the "***Right of First Refusal Agreement***") of even date herewith among the Company and the parties identified therein, and the Amended and Restated Voting Agreement (the "***Voting Agreement***") of even date herewith among the Company and the parties identified therein, each as may be amended in accordance with its terms.

2. ***Definitions.***

For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person.

2.2. "***Annual Bonus Rate for the Termination Year***" shall mean:

2.2.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.2.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the year in which the termination occurs times the Executive's target bonus percentage for the year in which the termination occurs.

2.3. "***Annual Bonus Rate for the Reference Year***" shall mean:

2.3.1. if the Executive has not previously received an annual bonus at the time of termination, the Executive's Bonus Rate; and

2.3.2. if the Executive has previously received an annual bonus payment at the time of termination, the lesser of the Executive's Bonus Rate and the product of the Managers' Bonus Rate for the Reference Year times the Executive's target bonus percentage for the year in which the termination occurs.

2.4. "***Call***" shall mean the right of the Company to buy Vested Shares pursuant to Section 9.4.

2.5. "***Cause***" shall mean the occurrence of any of the following events:

2.5.1. the Executive's willful misconduct or gross negligence that is materially injurious to the Company;

2.5.2. the Executive's conviction or plea of guilty or nolo contendere to any felony or crime involving moral turpitude;

2.5.3. the Executive's commission of any act of fraud with respect to the Company;

2.5.4. the Executive's willful violation of any federal or state securities law; or

2.5.5. the Executive's willful and continued failure to perform the Executive's job duties after 30 days' written notice from the Board setting forth in detail the specific respects in which it believes the Executive has willfully and not substantially performed such job duties and a failure by Executive to cure within such 30-day period if capable of being cured.

2.6. ***"Change of Control"*** means (i) a sale of all or substantially all of the assets of the Company to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Company to a Person in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder; (iii) a merger or consolidation of the Company with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

2.7. "***Change of Control Severance***" shall mean:

2.7.1. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary in effect at the time of termination times (b) the number of months included in the Severance Period, subject to standard deductions and withholdings;

2.7.2. an amount, payable in one lump sum at the time of termination, equal to the product of the Executive's Bonus Rate times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination;

2.7.3. an amount, payable in one lump sum at the time of termination, equal to the product of (a) one-twelfth of the Executive's annual base salary as in effect at the time of termination times (b) the Executive's Bonus Rate times (c) the number of months included in the Severance Period, subject to standard deductions and withholdings; and

2.7.4. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment.

2.8. "***Common Shares***" shall mean the shares of Common Stock that the Executive now owns or hereafter acquires from the Company.

2.9. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance then in force covering employees of the Company. In the event the Company has no policy of disability income insurance in force covering employees of the Company, the term "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board and the Executive, determines to have incapacitated the Executive from performing all of the Executive's usual services for the Company for a period of at least 120 days during any 12 month period (whether or not consecutive) and is expected to continue to incapacitate the Executive thereafter. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

2.10. *"**Executive's Bonus Rate**"* shall mean:

2.10.1. if the Executive has not previously received an annual bonus, the target bonus percentage for the year in which the termination occurs;

2.10.2. if the Executive has previously received one annual bonus payment at the time of termination, that percentage calculated by dividing the annual bonus actually paid for the year to which the bonus relates by the salary actually paid for such year; or

2.10.3. if the Executive has received more than one annual bonus payment at the time of termination, the average over the prior two years of the percentage calculated by dividing the bonus actually paid for the year to which the bonus relates by the salary actually paid for such year.

2.11. "***Fair Market Value***" shall mean the value of the Shares determined in good faith by the Board of Directors, provided that (a)(i) if the Shares are listed on any established stock exchange or a national market system, their fair market value shall be the average of the closing sales price for the Shares as quoted on such system or exchange (or the largest such exchange) over the 5-trading-day period ending immediately prior to the date of the Notice of Put/Call Exercise, as reported in the Wall Street Journal or similar publication, and (ii) if the Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value shall be the mean between the closing bid and asked prices for the Shares on the date of the Notice of Put/Call Exercise (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices), and (b) if clauses (a)(i) or (a)(ii) are not applicable, the Board of Directors shall apply valuation techniques generally used by reputable investment bankers (without giving effect to any premium that might be paid by a strategic buyer in an acquisition) to determine the value of the Shares as of the date of the Notice of Put/Call Exercise.

2.12. "***Founder Shares***" shall mean shares of Common Stock that the Executive owns immediately prior to the Initial Closing (as defined in the Purchase Agreement).

2.13. "***Good Reason***" shall mean the occurrence of any of the following events without the Executive's written consent:

2.13.1. a substantial diminution by the Company in the nature or status of the Employee's responsibilities or an adverse change in title or reporting level as they exist on the date of this Agreement, or the addition of responsibilities of a nature or status inconsistent with the office of Senior Vice President, Development of a company such as the Company;

2.13.2. the relocation of the Company's executive offices or principal business location to a point more than 20 miles (or greater distance with the prior written consent of the Executive) from the Company's current facilities in Palo Alto, California;

2.13.3. a reduction by the Company of the Executive's base salary or bonus rate as initially set forth herein or as the same may be increased from time to time, other than a comparable across-the-board reduction in base salary or bonus rate of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital;

2.13.4. any action by the Company (including the elimination of benefit plans without providing substitutes thereof or the reduction of the Executive's benefits thereunder) that would materially diminish the aggregate value of the Executive's fringe benefits as they exist at such time, other than a comparable across-the-board diminution in fringe benefits of (a) the Company's employees generally, or (b) the senior officers generally (if approved by a majority of the Company's senior officers), in each case as a result of the Company's need to conserve capital; or

2.13.5. a material breach of this Agreement by the Company.

2.14. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

2.15. "***Initial B/P Holder***" means a Person that holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued.

2.16. "***Manager***" shall mean any of Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L. T. Wissel.

2.17. "***Managers' Bonus Rate***" shall mean the average for all Managers of X/Y where X is the actual bonus paid for the year in which a termination occurs or the Reference Year, as appropriate, and Y is the target bonus for such year; but including only those Managers who were employed for the entire year; provided that if there were no Managers employed for the entire year, then the Managers' Bonus Rate shall equal the Executive's Bonus Rate.

2.18. "***Management Team***" shall mean the Chairman of the Board (if the Chairman is an officer of the Company), the Chief Executive Officer, and the management employees reporting directly to the Chairman or the Chief Executive Officer, in office immediately prior to a Significant Transaction.

2.19. "***Original Purchase Price***" for each Share shall mean the price paid by the Executive for that Share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization or other similar transaction after the date hereof).

2.20. "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" shall have the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "Securities Act").

2.21. "***Preferred Shares***" shall mean the shares of the Company's Series A Preferred Stock and Series B Preferred Stock (or Common Stock issuable upon conversion of the Series A Preferred Stock or Series B Preferred Stock) that the Executive now owns or hereafter acquires from the Company.

2.22. "***Put***" shall mean the right of the Executive or his/her estate to require the Company to buy Vested Shares pursuant to Section 9.4.

2.23. "***Reference Year***" shall mean the year following the year in which the Executive's employment termination occurs.

2.24. "***Regular Severance***" shall mean:

2.24.1. an amount, payable in accordance with the Company's customary payroll practices, for each month during the Severance Period, equal to one-twelfth of the Executive's base salary in effect at the time of termination, subject to standard deductions and withholdings; plus

2.24.2. an amount, payable monthly, equal to the monthly COBRA payments to continue medical and dental benefits for a period ending on the earlier of (a) the end of the last month of the Severance Period and (b) the date on which the Executive is covered by medical and dental insurance through his or her own employment;

2.24.3. an amount, payable at such time as bonus payments are due to other employees of the Company for the year in which the termination occurs, equal to the sum of (a) one-half of the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination plus (b) the Annual Bonus Rate for the Termination Year times Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days remaining in the year of Executive's termination after the date of termination; and

2.24.4. an amount, payable at such time as bonus payments are due to other employees of the Company for the Reference Year, equal to the Annual Bonus Rate for the Reference Year times the Executive's base salary in effect at the time of termination prorated, on the basis of a 365-day year, to reflect the number of days elapsed in the year of Executive's termination prior to and including the date of termination.

2.25. ***"Right of Repurchase"*** shall mean the Company's right to repurchase Unvested Shares pursuant to Section 8.1.

2.26. "***Severance Period***" shall mean 12 months plus one additional month for each quarter, up to a maximum of 12, that the Executive has been employed by the Company in excess of two years. For avoidance of doubt, the maximum Severance Period is two years.

2.27. "***Shares***" shall mean the Common Shares and the Preferred Shares.

2.28. "***Significant Transaction***" shall mean a merger or consolidation of the Company with or into any Person, or an acquisition of all of the business of another Person regardless of form, if and only if, after such merger, consolidation or acquisition, directors of the Company immediately prior to such merger, consolidation or acquisition constitute a majority of the directors of the surviving entity or its parent.

2.29. "***Transactional Agreements***" shall have the meaning assigned in Section 1.

2.30. "***Unvested Founder Shares***" shall mean the Founder Shares held by the Executive that are then subject to the Right of Repurchase.

2.31. "***Vested Shares***" shall mean the Shares held by the Executive that are not subject to the Right of Repurchase.

2.32. "***Vesting Base Date***" shall mean the date(s) set forth on Exhibit A.

3. ***Employment.***

3.1. ***Term***. The Company hereby employs the Executive, and the Executive hereby accepts employment by the Company, upon the terms and conditions set forth in this Agreement. The term of the Executive's employment under the terms and conditions of this Agreement shall continue until the fifth anniversary of the date of this Agreement, subject to the provisions of Section 5.

3.2. ***Title***. The Executive shall have the title of Senior Vice President, Development of the Company and shall also serve in such other capacity or capacities as the Board of Directors of the Company (the "***Board***") may from time to time prescribe. The Executive shall report to the Chief Executive Officer of the Company.

3.3. ***Duties***. The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Senior Vice President, Development, consistent with the bylaws of the Company and as required by the Board.

3.4. ***Location***. Unless the Parties otherwise agree in writing, during the term of Executive's employment under this Agreement, the Executive shall perform the services Executive is required to perform pursuant to this Agreement at the Company's

offices, located in Palo Alto, California; provided, however, that the Company may from time to time require the Executive to travel temporarily to other locations in connection with the Company's business.

3.5. ***Commitment***. Unless otherwise agreed to in advance by the Company's Board of Directors, during the Executive's employment by the Company, the Executive shall devote substantially all of Executive's business energies, interest, abilities and productive time to the proper and efficient performance of Executive's duties under this Agreement; provided, however, the Executive may engage in other outside business activity listed on Exhibit B hereto. If the Executive wishes to engage in any other outside work, the Executive agrees to notify and consult with the Board of Directors and shall not engage in such other outside work without the prior approval of the Board of Directors.

4. ***Compensation of the Executive.***

4.1. ***Base Salary***. The Company shall pay the Executive a base salary at a rate of three hundred thousand dollars ($300,000) per year for calendar year 2004, subject to increases approved by the Board of Directors for calendar years thereafter, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day year.

4.2. ***Bonus***. In addition to Executive's base salary, the Executive will be entitled to receive a bonus determined in accordance with an executive bonus plan established by the Board of Directors. The target bonus for the Executive shall be 40% (subject to increases approved by the Board of Directors) of the annual base salary rate.

4.3. ***Employment Taxes***. All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

4.4. ***Benefits***. The Executive shall, in accordance with Company policy and the terms of the applicable plan documents, be eligible to participate in benefits under any executive benefit plan or arrangement which may be in effect from time to time and made available to the Company's executive or key management employees.

4.5. ***Vacation***. Executive shall be eligible for paid time off and holidays in accordance with the Company's standard policies for executive employees.

4.6. ***Expenses***. The Company shall reimburse Executive for all reasonable, documented out-of-pocket business expenses incurred on behalf of the Company in the performance of the Executive's duties.

5. ***Termination.***

5.1. ***Termination by the Company***. The Executive's employment with the Company may be terminated under the following conditions:

5.1.1. ***Death or Disability***. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability.

5.1.2. ***For Cause***. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of notice to the Executive specifying the Cause or Causes relied upon for such termination. Any notice of termination given pursuant to this Section 5.1.2 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.1.3. ***Without Cause***. The Company may terminate the Executive's employment under this Agreement at any time for any reason other than for "Cause" by delivery of notice of such termination to the Executive. Any notice of termination given pursuant to this Section 5.1.3 shall effect termination as of the future date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided in Section 15 below.

5.2. ***Termination By The Executive***. The Executive may terminate the Executive's employment with the Company under the following conditions:

5.2.1. ***For Good Reason***. The Executive may terminate the Executive's employment under this Agreement for Good Reason effective 30 days following delivery of notice to the Company specifying the Good Reason relied upon by the Executive for such termination, provided that such notice is delivered within three (3) months following the occurrence of any event or events constituting Good Reason, and failure of the Company to cure the event which constitutes Good Reason within such 30-day period.

5.2.2. ***Without Good Reason***. The Executive may terminate the Executive's employment hereunder for other than Good Reason effective upon 30 days' notice to the Company.

5.3. ***Termination by Mutual Agreement of the Parties***. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement. Any agreement of termination entered into

pursuant to this Section 5.3 shall effect termination as of the date specified in such agreement or, in the event no such date is specified, on the last day of the month in which such agreement is delivered or deemed delivered as provided in Section 15 below.

5.4. ***Termination of Obligations***. In the event of the termination of the Executive's employment hereunder and pursuant to this Section 5, the Company shall have no obligation to pay Executive any base salary, bonus or other compensation or benefits, except as otherwise provided in this Agreement or for benefits due to the Executive (and/or the Executive's dependents) under the terms of the Company's benefit plans or for reimbursement of reasonable, documented business expenses.

6. ***Compensation Upon Termination.***

6.1. ***Death or Complete Disability***. If the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination and accrued bonus (if any), subject to standard deductions and withholdings, at the rate in effect at the time of termination to Executive and/or Executive's heirs, and, except as provided in Section 9.2, the Company shall thereafter have no further obligations to the Executive and/or Executive's estate under this Agreement.

6.2. ***For Cause or Without Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company shall pay the Executive's accrued base salary and accrued and unused vacation benefits earned through the date of termination, subject to standard deductions and withholdings, at the rate in effect at the time of the notice of termination to Executive, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

6.3. ***Without Cause or For Good Reason***. If the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (With Good Reason) (other than With Good Reason due to a relocation as described in Section 2.13.2 which event is covered in Section 6.5), the Executive shall be entitled to the Executive's base salary and accrued and unused vacation benefits earned through the date of termination, in each case subject to standard deductions and withholdings. In addition, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.4. ***Following a Significant Transaction***. If the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction, and

Executive is employed by the Company on the first anniversary of the effective date of the Significant Transaction, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.4, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5. ***Change of Control Severance.***

6.5.1. If any of the following occur, upon the Executive's furnishing to the Company an effective waiver and release of claims (a form of which is attached hereto as Exhibit C), the Company shall pay the Executive Change of Control Severance for the period and in the manner set forth in the definition thereof:

(i) the Executive's employment is terminated pursuant to Section 5.2.1 (With Good Reason) due to a relocation as described in Section 2.13.2;

(ii) the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (With Good Reason) in connection with a Change of Control or Significant Transaction; or

(iii) the employment of 50% or more of the members of the Management Team, including the employment of the Chief Executive Officer, is terminated in connection with a Significant Transaction and, prior to the first anniversary of the effective date of the Significant Transaction, the Executive's employment is terminated by the Company pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (for Good Reason).

6.5.2. In the event there is a Change of Control of the Company and provided Executive is employed by the Company on the first anniversary of the effective date of the Change of Control, Executive shall have an option (exercisable by delivering notice of exercise to the Company) to terminate his or her employment. If the Executive opts to terminate his or her employment pursuant to this Section 6.5.2, at the time of such termination the Company shall pay the Executive Regular Severance for the period and in the manner set forth in the definition thereof.

6.5.3. In the event that any payment received or to be received by the Executive pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "***Code***") and (ii) but for this Section 6.5.3, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then, subject to the provisions of Section 6.5.4 hereof, such Payment shall be reduced to the largest amount which would result in no portion of the Payment being subject to the

Excise Tax. The determination of any required reduction pursuant to this Section 6.5.3 shall be made by a nationally recognized certified public accounting firm used by the Company immediately prior to the effective date of a change of control or, if such firm declines to serve, such other nationally recognized certified public accounting firm as may be designated by the Company (the "***Accounting Firm***") in its discretion. All fees and expenses of the Accounting Firm shall be borne by the Company. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. If the Accounting Firm determines that a reduction is required by this Section 6.5.3, the Executive, in his/her discretion, may determine which portion of the Payment shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to him/her. If the Internal Revenue Service (the "***IRS***") determines that a Payment is subject to the Excise Tax, then Section 6.5.4 hereof shall apply, and the enforcement of Section 6.5.4 shall be the exclusive remedy to the Company for a failure by the Executive to reduce the Payment so that no portion thereof is subject to the Excise Tax.

6.5.4. If, notwithstanding any reduction described in Section 6.5.3 (or in the absence of any such reduction), the IRS determines that the Executive is liable for the Excise Tax as a result of the receipt of a Payment, then the Executive shall be obligated to pay back to the Company, within thirty (30) days after final IRS determination, an amount of the Payment equal to the "***Repayment Amount***". The Repayment Amount with respect to a Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Executive's net proceeds with respect to any Payment (after taking into account the payment of the Excise Tax imposed on such Payment) shall be maximized. If the Excise Tax is not eliminated pursuant to this Section 6.5.4, the Executive shall pay the Excise Tax.

7. ***Restrictions on Transfer.***

Subject to the other provisions hereof, and except as permitted under the Right of First Refusal Agreement or Voting Agreement, Executive shall not sell, pledge or otherwise transfer to any person or entity any Shares or any interest therein until the earlier of (a) the fifth anniversary of the Initial Closing (as defined in the Purchase Agreement), and (b) the closing of a Change of Control.

8. ***Repurchase of Unvested Shares.***

8.1. ***Repurchase Right***. Except as provided in Section 8.2 below, if the Executive's employment is terminated, the Company has a right (but not an obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Founder Shares held by the Executive for a price per share equal to the Original Purchase Price; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Founder Shares on each monthly anniversary following the Vesting Base Date for such Founder Shares (i.e., so that the Right of Repurchase shall have expired with respect to all of such Common Shares 48 months following the Vesting Base Date).

8.2. ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 8.1,

8.2.1. if, prior to a Change of Control (and not in connection with such Change of Control), the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or Section 5.2.1 (For Good Reason) at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares;

8.2.2. if, in connection with a Change of Control or within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares;

8.2.3. if the Executive's employment is terminated as described in Section 6.5.1.(ii) or Section 6.5.1(iii), then all of the then Unvested Founder Shares held by the Executive will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Founder Shares; or

8.2.4. if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), then one-fourth (1/4th) of the Founder Shares (or the actual number of Unvested Founder Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Founder Shares.

8.3. ***Procedure to Exercise Right of Repurchase***. To exercise its Right of Repurchase, the Company must give notice ("Notice of Repurchase") to the Executive (or his/her estate) within 90 days after the date of the Executive's termination and must purchase the Unvested Founder Shares no later than 10 days after the date of the notice.

9. ***Put/Call Rights on Vested Shares.***

9.1. ***Termination For Cause or Without Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.2 (For Cause) or 5.2.2 (Without Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to the lower of their (a) Original Purchase Price or (b) Fair Market Value.

9.2. ***Termination due to Death or Complete Disability.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.1 (Death or Disability), the Company will have the right (but not the obligation) to Call, and the Executive or Executive's estate will have the right (but not the obligation) to Put, any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.3. ***Termination Without Cause or For Good Reason.*** Until the fifth anniversary following the Initial Closing, if the Executive's employment is terminated pursuant to Section 5.1.3 (Without Cause) or 5.2.1 (For Good Reason), the Company will have the right (but not the obligation) to Call any or all of the Vested Shares at a price per share equal to their Fair Market Value.

9.4. ***Procedure to Exercise Put/Call Rights***. To exercise its right to Call Vested Shares, the Company must give notice ("***Notice of Put/Call Exercise***") to the Executive (or his/her estate) within the later of (a) 90 days after the date of the Executive's termination and (b) if the Executive purchases the Vested Shares pursuant to an option exercise after the date of the Executive's termination, 30 days after the date of such purchase; and the Company must purchase the Vested Shares no later than 10 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period). To exercise its right to Put Vested Shares, the Executive or his/her estate must give notice ("***Notice of Put/Call Exercise***") to the Company within 395 days after the date of the Executive's termination. The Company will purchase the Vested Shares no later than 30 days after the date of the notice (unless the Executive or his/her estate, in his, her or its discretion, agrees to a longer period).

9.5. ***Termination of Call Right***. The Company's right to Call the Vested Shares shall terminate upon the closing of a Change of Control.

10. ***Permitted Transfers; Prohibited Transfers.***

10.1. ***Permitted Transfers.*** The restriction on transfer under Section 7 and the Company's right to Call Vested Shares under Section 9.4 shall not apply to:

10.1.1. any transfer of Shares to the ancestors, descendants, spouse or domestic partner of Executive, or to trusts for estate planning purposes for the benefit of such persons or the Executive;

10.1.2. any transfer of Shares by the laws of descent or distribution;

10.1.3. after the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), up to 20% of the Shares then held by the Executive, provided that the Company's Common Stock has been listed on an established stock exchange or a national market system for at least one year;

10.1.4. any transfer of Shares pursuant to, and in accordance with, Section 4 of the Right of First Refusal Agreement or Section 2 of the Voting Agreement; and

10.1.5. any sale of Shares pursuant to an effective registration statement under the Securities Act of 1933, as amended, in accordance with the Investor Rights Agreement.

The Shares transferred under Section 10.1.1 or 10.1.2 shall remain "***Shares***" for all purposes of this Agreement, the transferee shall be treated as the "***Executive***" for all purposes of this Agreement (other than with respect to matters related to employment) and, as a condition to any such transfer, the transferee shall be required to agree in writing to be bound by the provisions of Sections 7, 8 and 9 of this Agreement.

10.2. ***Prohibited Transfers.*** Any sale, pledge, or other transfer of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

11. ***Legend; Stop Transfer Instructions.***

11.1. ***Legend***. Each certificate representing Shares or issued to any person in connection with a transfer pursuant to Section 10.1.1 or 10.1.2 shall be endorsed with the following legend:

"THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN EMPLOYMENT AGREEMENT BY AND BETWEEN THE HOLDER HEREOF (OR AN ASSIGNOR) AND THE COMPANY. A COPY OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

11.2. ***Stop Transfer Instructions***. The Executive agrees that the Company may instruct its transfer agent to impose transfer restrictions on the shares represented by certificates bearing the legend referred to in Section 11.1 above to enforce the provisions of this Agreement and the Company agrees promptly to do so. The legend shall be removed upon termination of Sections 7, 8 and 9 of this Agreement.

12. ***Survival of Certain Sections.***

Sections 1, 2 and 6 through 25 of this Agreement will survive the termination of Executive's employment under this Agreement.

13. ***Ownership.***

Executive represents and warrants that he or she is the sole legal and beneficial owner of the Shares subject to this Agreement and that no other person or entity has any interest (other than a community property interest) in such shares and that no consent of any other person or entity is required by reason of any community property interest or otherwise to enter into this Agreement and carry out the provisions hereof.

14. ***Market Standoff.***

The Executive hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the registration of a public offering of any securities of the Company under the Securities Act of 1933, as amended (the "***Securities Act***"), the Executive shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Shares or other securities of the Company (a "***Market Standoff***") without the prior written consent of the Company and the underwriter's representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Executive of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the underwriter's representative; provided, however, that the Executive shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Executive has agreed to a Market Standoff. The obligations of the Executive under this Section 14 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

15. ***Escrow of Shares.***

Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit D, until the expiration of Sections 7, 8 and 9 of this Agreement, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed in blank in the form attached hereto as Exhibit E. Upon request by the Company, the Executive will deliver the Shares to the Escrow Agent.

16. ***Assignment and Binding Effect.***

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive's duties under this Agreement, no employment obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

17. ***Notices.***

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Executive shall be sent to the address as set forth on the signature page or at such other address as the Executive may designate by ten days advance notice to the Company.

18. ***Governing Law.***

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

19. ***Amendment and Waiver.***

Any provision of this Agreement may be amended or waived only by a written instrument signed by the Company (with approval of a majority of the Board of Directors) and the Executive. Any such waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

20. ***Severability.***

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. ***Interpretation; Construction.***

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. ***Attorneys' Fees.***

If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

23. ***Cumulative Remedies.***

No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

24. ***Further Assurances.***

The parties to this Agreement agree to cooperate with the other parties, and to execute such further instruments, documents and agreements, and to give such further written assurances, as may be reasonably requested by the other parties, to carry into effect the intent and purpose of this Agreement.

25. ***Counterparts.***

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement on February 18, 2004, to be effective as of February 18, 2004.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

EXECUTIVE:

/s/ Janne L.T. Wissel
Janne L.T. Wissel

Address: _____
_____

EXHIBIT A

VESTING BASE DATE

For shares of the Company's Common Stock now held by the Executive, the Vesting Base Date shall be September 3, 2003.

For shares of the Company's Common Stock issued upon exercise by the Executive of an option to purchase shares of the Common Stock (an "Option"), the Vesting Base Date shall be the vesting base date set forth in the Option agreement/notice of exercise.

For shares of the Company's Common Stock hereafter acquired by the Executive from the Company, but not issued pursuant to an Option, the Vesting Base Date shall be the date of acquisition of such shares.

EXHIBIT B

OTHER BUSINESS ACTIVITY

ALZA Corporation: a continuing limited consulting agreement.

Non-profit Boards of Directors from time to time.

EXHIBIT C

RELEASE AND WAIVER OF CLAIMS

In consideration of the payments and other benefits set forth in Section 6.4 of the Employment Agreement dated _____, 2004, to be effective as of _____, 200__ to which this form is attached, I, _____, hereby furnish JAZZ PHARMACEUTICALS, INC. (the "***Company***") with the following release and waiver ("***Release and Waiver***").

In exchange for the consideration provided to me by this Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, insurers, Affiliates, and assigns from any and all claims, demands, liabilities, and obligations. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all contractual claims, including claims for breach of contract, wrongful termination, or breach of the covenant of good faith and fair dealing; (3) all tort claims, including claims for fraud, defamation, and emotional distress; and (4) all federal, state, and local statutory claims including claims for discrimination, harassment, attorneys' fees or other claims arising under the federal Civil Rights Act of 1964, as amended, the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967, as amended ("***ADEA***"), or the California Fair Employment and Housing Act. However, this general release does not extend to rights and benefits expressly provided for in the Employment Agreement, under the governing documents for any securities I own of record, and under any agreement, bylaw or statute providing me with indemnification.

Except as provided in the Employment Agreement described above, I acknowledge and agree that the Company already has paid me any and all salary, other wages, bonuses, commissions, incentives, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options or any other ownership interests in the Company I am owed, and that no such further payments, amounts or interests are owed or will be owed.

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired.

If I am less than 40 years of age upon execution of this Release and Waiver, I acknowledge that I have the right to consult with an attorney before executing this Release and Waiver (although I may choose voluntarily not to do so); and (c) I have five (5) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier).

I agree neither to file nor to encourage or knowingly permit another to file any claim, charge, grievance, complaint or action for any sort of monetary damages against the Company and other released parties set forth above concerning any matter covered by this Agreement, except as otherwise provided by law.

Date: _____ _____

[TYPE NAME]

EXHIBIT D

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a Delaware corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Executive***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Employment Agreement, dated as of _____, 2004 (the "***Agreement***") between the Company and the Executive (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Executive and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Executive and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Executive irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Executive does hereby irrevocably constitute and appoint you as Executive's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Executive shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Executive, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Executive a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one hundred (100) days after cessation of Executive's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Executive a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Executive, you shall deliver all of the same to Executive and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Executive while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

EXECUTIVE: [_____]

_____

_____

_____

Executive's Spouse (*if applicable*)

Dated: _____

ESCROW AGENT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT E

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Employment Agreement between the undersigned ("***Executive***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated _____, 2004 (the "***Agreement***"), Executive hereby sells, assigns and transfers unto the Company _____ (_____) shares of the Common Stock of the Company, standing in Executive's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Executive.

Exhibit 10.8

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT is entered into as of September 24, 2004, by JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "Company"), and ALAN SEBULSKY (the "Purchaser").

SECTION 1. ACQUISITION OF SHARES.

(a) **Transfer**. On the terms and conditions set forth in this Agreement, the Company agrees to transfer 146,671 Shares to the Purchaser. The transfer shall occur at the offices of the Company on the date set forth above or at such other place and time as the parties may agree.

(b) **Consideration**. The Purchaser agrees to pay $1.3636 for each Purchased Share. The Purchase Price is agreed to be 100% of the Fair Market Value of the Purchased Shares. Payment shall be made on the transfer date in cash.

(c) **Defined Terms**. Capitalized terms not defined above are defined in Section 13 of this Agreement.

SECTION 2. RIGHT OF REPURCHASE.

(a) **Scope of Right of Repurchase**. Until they vest in accordance with Subsection (b) below, the Purchased Shares shall be Restricted Shares and shall be subject to the Company's Right of Repurchase. The Company, however, may decline to exercise its Right of Repurchase or may exercise its Right of Repurchase only with respect to a portion of the Restricted Shares. The Company may exercise its Right of Repurchase only during the Repurchase Period following the termination of the Purchaser's Service. The Right of Repurchase may be exercised automatically under Subsection (d) below. If the Right of Repurchase is exercised, the Company shall pay the Purchaser an amount equal to the Purchase Price for each of the Restricted Shares being repurchased.

(b) **Lapse of Right of Repurchase**. The Right of Repurchase shall lapse with respect to 1/48th of the Purchased Shares when the Purchaser completes each month of continuous Service as measured from July 13, 2004. In addition, the Right of Repurchase shall lapse in full if the Company is subject to a Change in Control before the Purchaser's Service terminates.

(c) **Escrow**. Upon issuance, the certificate(s) for Restricted Shares shall be deposited in escrow with the Company to be held in accordance with the provisions of this Agreement. Any additional or exchanged securities or other property described in Subsection (f) below shall immediately be delivered to the Company to be held in escrow. All ordinary cash dividends on Restricted Shares (or on other securities held in escrow) shall be paid directly to the

Purchaser and shall not be held in escrow. Restricted Shares, together with any other assets held in escrow under this Agreement, shall be (i) surrendered to the Company for repurchase upon exercise of the Right of Repurchase or the Right of First Refusal or (ii) released to the Purchaser upon his or her request to the extent that the Shares have ceased to be Restricted Shares (but not more frequently than once every six months). In any event, all Purchased Shares that have ceased to be Restricted Shares, together with any other vested assets held in escrow under this Agreement, shall be released within 90 days after the earlier of (i) the termination of the Purchaser's Service or (ii) the lapse of the Right of First Refusal.

(d) **Exercise of Right of Repurchase**. The Company may exercise its Right of Repurchase for some or all of the Restricted Shares during the Repurchase Period. If the Company exercises its Right of Repurchase during the Repurchase Period, the Company shall pay to the holder of the Restricted Shares the purchase price determined under Subsection (a) above for the Restricted Shares being repurchased. Payment shall be made in cash or cash equivalents and/or by canceling indebtedness to the Company incurred by the Purchaser in the purchase of the Restricted Shares. The certificate(s) representing the Restricted Shares being repurchased shall be delivered to the Company properly endorsed for transfer.

(e) **Termination of Rights as Stockholder**. If the Right of Repurchase is exercised in accordance with this Section 2 and the Company makes available the consideration for the Restricted Shares being repurchased, then the person from whom the Restricted Shares are repurchased shall no longer have any rights as a holder of the Restricted Shares (other than the right to receive payment of such consideration). Such Restricted Shares shall be deemed to have been repurchased pursuant to this Section 2, whether or not the certificate(s) for such Restricted Shares have been delivered to the Company or the consideration for such Restricted Shares has been accepted.

(f) **Additional or Exchanged Securities and Property**. In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Restricted Shares shall immediately be subject to the Right of Repurchase. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Restricted Shares. Appropriate adjustments shall also be made to the price per share to be paid upon the exercise of the Right of Repurchase, provided that the aggregate purchase price payable for the Restricted Shares shall remain the same. In the event of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, the Right of Repurchase may be exercised by the Company's successor.

(g) **Transfer of Restricted Shares**. The Purchaser shall not transfer, assign, encumber or otherwise dispose of any Restricted Shares without the Company's written consent, except as provided in the following sentence. The Purchaser may transfer Restricted Shares to one or more members of the Purchaser's Immediate Family or to a trust established by the Purchaser for the benefit of the Purchaser and/or one or more members of the Purchaser's

Immediate Family, provided in either case that the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. If the Purchaser transfers any Restricted Shares, then this Agreement shall apply to the Transferee to the same extent as to the Purchaser.

(h) **Assignment of Right of Repurchase**. The Board of Directors may freely assign the Company's Right of Repurchase, in whole or in part. Any person who accepts an assignment of the Right of Repurchase from the Company shall assume all of the Company's rights and obligations under this Section 2.

SECTION 3. RIGHT OF FIRST REFUSAL.

(a) **Right of First Refusal**. In the event that the Purchaser proposes to sell, pledge or otherwise transfer to a third party any Purchased Shares, or any interest in Purchased Shares, the Company shall have the Right of First Refusal with respect to all (and not less than all) of such Purchased Shares. If the Purchaser desires to transfer Purchased Shares, the Purchaser shall give a written Transfer Notice to the Company describing fully the proposed transfer, including the number of Purchased Shares proposed to be transferred, the proposed transfer price, the name and address of the proposed Transferee and proof satisfactory to the Company that the proposed sale or transfer will not violate any applicable federal or state securities laws. The Transfer Notice shall be signed both by the Purchaser and by the proposed Transferee and must constitute a binding commitment of both parties to the transfer of the Purchased Shares. The Company shall have the right to purchase all, and not less than all, of the Purchased Shares on the terms of the proposal described in the Transfer Notice (subject, however, to any change in such terms permitted under Subsection (b) below) by delivery of a notice of exercise of the Right of First Refusal within 30 days after the date when the Transfer Notice was received by the Company.

(b) **Transfer of Shares**. If the Company fails to exercise its Right of First Refusal within 30 days after receiving the Transfer Notice, the Purchaser may, not later than 90 days after the Company received the Transfer Notice, conclude a transfer of the Purchased Shares subject to the Transfer Notice on the terms and conditions described in the Transfer Notice, provided that any such sale is made in compliance with applicable federal and state securities laws and not in violation of any other contractual restrictions to which the Purchaser is bound. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Purchaser, shall again be subject to the Right of First Refusal and shall require compliance with the procedure described in Subsection (a) above. If the Company exercises its Right of First Refusal, the parties shall consummate the sale of the Purchased Shares on the terms set forth in the Transfer Notice within 60 days after the Company received the Transfer Notice (or within such longer period as may have been specified in the Transfer Notice); provided, however, that in the event the Transfer Notice provided that payment for the Purchased Shares was to be made in a form other than cash or cash equivalents paid at the time of transfer, the Company shall have the option of paying for the Purchased Shares with cash or cash equivalents equal to the present value of the consideration described in the Transfer Notice.

(c) **Additional or Exchanged Securities and Property**. In the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Purchased Shares subject to this Section 3 shall immediately be subject to the Right of First Refusal. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Purchased Shares subject to this Section 3.

(d) **Termination of Right of First Refusal**. Any other provision of this Section 3 notwithstanding, in the event that the Stock is readily tradable on an established securities market when the Purchaser desires to transfer Purchased Shares, the Company shall have no Right of First Refusal, and the Purchaser shall have no obligation to comply with the procedures prescribed by Subsections (a) and (b) above.

(e) **Permitted Transfers**. This Section 3 shall not apply to (i) a transfer by beneficiary designation, will or intestate succession or (ii) a transfer to one or more members of the Purchaser's Immediate Family or to a trust established by the Purchaser for the benefit of the Purchaser and/or one or more members of the Purchaser's Immediate Family, provided in either case that the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. If the Purchaser transfers any Purchased Shares, either under this Subsection (e) or after the Company has failed to exercise the Right of First Refusal, then this Agreement shall apply to the Transferee to the same extent as to the Purchaser.

(f) **Termination of Rights as Stockholder**. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be purchased in accordance with this Section 3, then after such time the person from whom such Shares are to be purchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been purchased in accordance with the applicable provisions hereof, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

(g) **Assignment of Right of First Refusal**. The Board of Directors may freely assign the Company's Right of First Refusal, in whole or in part. Any person who accepts an assignment of the Right of First Refusal from the Company shall assume all of the Company's rights and obligations under this Section 3.

SECTION 4. OTHER RESTRICTIONS ON TRANSFER.

(a) **Purchaser Representations**. In connection with the issuance and acquisition of Shares under this Agreement, the Purchaser hereby represents and warrants to the Company as follows:

(i) The Purchaser is acquiring and will hold the Purchased Shares for investment for his or her account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(ii) The Purchaser understands that the Purchased Shares have not been registered under the Securities Act by reason of a specific exemption therefrom and that the Purchased Shares must be held indefinitely, unless they are subsequently registered under the Securities Act or the Purchaser obtains an opinion of counsel, in form and substance satisfactory to the Company and its counsel, that such registration is not required. The Purchaser further acknowledges and understands that the Company is under no obligation to register the Purchased Shares.

(iii) The Purchaser is aware of the adoption of Rule 144 by the Securities and Exchange Commission under the Securities Act, which permits limited public resales of securities acquired in a non-public offering, subject to the satisfaction of certain conditions, including (without limitation) the availability of certain current public information about the issuer, the resale occurring only after the holding period required by Rule 144 has been satisfied, the sale occurring through an unsolicited "broker's transaction," and the amount of securities being sold during any three-month period not exceeding specified limitations. The Purchaser acknowledges and understands that the conditions for resale set forth in Rule 144 have not been satisfied and that the Company has no plans to satisfy these conditions in the foreseeable future.

(iv) The Purchaser will not sell, transfer or otherwise dispose of the Purchased Shares in violation of the Securities Act, the Securities Exchange Act of 1934, or the rules promulgated thereunder, including Rule 144 under the Securities Act. The Purchaser agrees that he or she will not dispose of the Purchased Shares unless and until he or she has complied with all requirements of this Agreement applicable to the disposition of Purchased Shares and he or she has provided the Company with written assurances, in substance and form satisfactory to the Company, that (A) the proposed disposition does not require registration of the Purchased Shares under the Securities Act or all appropriate action necessary for compliance with the registration requirements of the Securities Act or with any exemption from registration available under the Securities Act (including Rule 144) has been taken and (B) the proposed disposition will not result in the contravention of any transfer restrictions applicable to the Purchased Shares under state securities law.

(v) The Purchaser has been furnished with, and has had access to, such information as he or she considers necessary or appropriate for deciding whether to invest in the Purchased Shares, and the Purchaser has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issuance of the Purchased Shares.

(vi) The Purchaser is aware that his or her investment in the Company is a speculative investment that has limited liquidity and is subject to the risk of complete loss. The Purchaser is able, without impairing his or her financial condition, to hold the Purchased Shares for an indefinite period and to suffer a complete loss of his or her investment in the Purchased Shares.

(b) **Securities Law Restrictions**. Regardless of whether the offering and sale of Shares under this Agreement have been registered under the Securities Act or have been registered or qualified under the securities laws of any state, the Company at its discretion may impose restrictions upon the sale, pledge or other transfer of the Purchased Shares (including the placement of appropriate legends on stock certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the securities laws of any state or any other law.

(c) **Market Stand-Off**. The Purchaser hereby agrees that, if so requested by the Company and the representative ("Underwriter's Representative") of the underwriter or underwriters selected for such underwriting if any, the Purchaser shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Purchased Shares or other securities of the Company ("Market Standoff") without the prior written consent of the Company and the Underwriter's Representative for such period of time (a) not to exceed 180 days following the effective date of a registration statement of the Company filed under the Securities Act in the case of the Company's initial public offering or (b) commencing with the date the Company provides notice to the Purchaser of a proposed follow-on offering and ending 90 days after the effective date of the registration statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that the Purchaser shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Purchaser has agreed to a Market Standoff. The obligations of the Purchaser under this Subsection (c) shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer or director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering.

(d) **Rights of the Company**. The Company shall not be required to (i) transfer on its books any Purchased Shares that have been sold or transferred in contravention of this Agreement or (ii) treat as the owner of Purchased Shares, or otherwise to accord voting, dividend or liquidation rights to, any transferee to whom Purchased Shares have been transferred in contravention of this Agreement.

SECTION 5. SUCCESSORS AND ASSIGNS.

Except as otherwise expressly provided to the contrary, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Company and its successors and assigns and be binding upon the Purchaser and the Purchaser's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person has become a party to this Agreement or has agreed in writing to join herein and to be bound by the terms, conditions and restrictions hereof.

SECTION 6. NO RETENTION RIGHTS.

Nothing in this Agreement shall confer upon the Purchaser any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser) or of the Purchaser, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

SECTION 7. TAX ELECTION.

The acquisition of the Purchased Shares may result in adverse tax consequences that may be avoided or mitigated by filing an election under Code Section 83(b). Such election may be filed only within 30 days after the date of purchase. **The Purchaser should consult with his or her tax advisor to determine the tax consequences of acquiring the Purchased Shares and the advantages and disadvantages of filing the Code Section 83(b) election. The Purchaser acknowledges that it is his or her sole responsibility, and not the Company's, to file a timely election under Code Section 83(b), even if the Purchaser requests the Company or its representatives to make this filing on his or her behalf.**

SECTION 8. LEGENDS.

All certificates evidencing Purchased Shares shall bear the following legends:

"THE SHARES REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THE SHARES (OR THE PREDECESSOR IN INTEREST TO THE SHARES). SUCH AGREEMENT GRANTS TO THE COMPANY CERTAIN RIGHTS OF FIRST REFUSAL UPON AN ATTEMPTED TRANSFER OF THE SHARES AND CERTAIN REPURCHASE RIGHTS UPON TERMINATION OF SERVICE WITH THE COMPANY. THE SECRETARY OF THE COMPANY WILL UPON WRITTEN REQUEST FURNISH A COPY OF SUCH AGREEMENT TO THE HOLDER HEREOF WITHOUT CHARGE."

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

If required by the authorities of any state in connection with the issuance of the Purchased Shares, the legend or legends required by such state authorities shall also be endorsed on all such certificates.

SECTION 9. NOTICE.

Any notice required by the terms of this Agreement shall be given in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notice shall be addressed to the Company at its principal executive office and to the Purchaser at the address that he or she most recently provided to the Company in accordance with this Section 9.

SECTION 10. ENTIRE AGREEMENT.

This Agreement constitutes the entire contract between the parties hereto with regard to the subject matter hereof. It supersedes any other agreements, representations or understandings (whether oral or written and whether express or implied) which relate to the subject matter hereof.

SECTION 11. CHOICE OF LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, as such laws are applied to contracts entered into and performed in such State.

SECTION 12. BLUE SKY LAW

THE SALE OF THE SECURITIES THAT ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION FOR SUCH SECURITIES PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

SECTION 13. DEFINITIONS.

(a) "**Agreement**" shall mean this Stock Purchase Agreement.

(b) "**Board of Directors**" shall mean the Board of Directors of the Company, as constituted from time to time.

(c) "**Change in Control**" shall mean:

(i) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not stockholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (A) the continuing or surviving entity and (B) any direct or indirect parent corporation of such continuing or surviving entity; or

(ii) The sale, transfer or other disposition of all or substantially all of the Company's assets.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(d) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(e) "**Employee**" shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(f) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(g) "**Immediate Family**" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law and shall include adoptive relationships.

(h) "**Outside Director**" shall mean a member of the Board of Directors who is not an Employee.

(i) "**Parent**" shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(j) "**Purchased Shares**" shall mean the Shares purchased by the Purchaser pursuant to this Agreement.

(k) "**Purchase Price**" shall mean the dollar value for which one Share may be purchased pursuant to this Agreement, as specified in Section 1(b).

(l) "**Repurchase Period**" shall mean a period of 90 consecutive days commencing on the date when the Purchaser's Service terminates for any reason, including (without limitation) death or disability.

(m) "**Restricted Share**" shall mean a Purchased Share that is subject to the Right of Repurchase.

(n) "**Right of First Refusal**" shall mean the Company's right of first refusal described in Section 3.

(o) "**Right of Repurchase**" shall mean the Company's right of repurchase described in Section 2.

(p) "**Securities Act**" shall mean the Securities Act of 1933, as amended.

(q) "**Service**" shall mean service as an Outside Director.

(r) "**Share**" shall mean one share of Stock.

(s) "**Stock**" shall mean the Common Stock of the Company, with a par value of $0.0001 per Share.

(t) "**Subsidiary**" shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(u) "**Transferee**" shall mean any person to whom the Purchaser has directly or indirectly transferred any Purchased Share.

(v) "**Transfer Notice**" shall mean the notice of a proposed transfer of Purchased Shares described in Section 3.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

PURCHASER:

/s/ Alan Sebulsky
Print Name: Alan Sebulsky

JAZZ PHARMACEUTICALS, INC.

By: /s/ Carol A. Gamble
Title: Senior Vice President and General Counsel

JAZZ PHARMACEUTICALS, INC.
COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "Agreement") is made and entered into as of March 20, 2003 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "Company"), and Bruce C. Cozadd (the "Purchaser").

A. The Purchaser is a founder, officer and director of the Company.

B. The Purchaser and the Company desire to specify the terms and conditions of Purchaser's equity participation in the Company.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Issuance of Shares; Purchase Price***. The Purchaser hereby purchases and the Company hereby sells 660,000 shares of the Company common stock (the "Shares") at a purchase price consisting of $0.0003 per share payable in cash.

2. ***Restrictions on Resale of Shares.***

2.1 ***Legends.*** The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legend:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT."

2.2 ***Market Standoff***. The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of the initial public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

3. ***Representations and Acknowledgments of the Purchaser.*** The Purchaser hereby represents, warrants, acknowledges and agrees that:

3.1 ***Investment.*** The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person, The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

3.2 ***Access to Information***. The Purchaser has had the opportunity to ask questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

3.3 ***Pre-Existing Relationship***. The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

3.4 ***Speculative Investment***. The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

3.5 ***Unregistered Securities.***

(a) The Purchaser must bear the economic risk of investment for an indefinite period_ of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

4. ***Tax Advice***. The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

5. ***No Commitment***. Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

6. ***Notices***. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally or five days after mailing if mailed by first class United States mail, certified or registered with return receipt requested, postage prepaid, and addressed as follows:

To the Company at: Jazz Pharmaceuticals, Inc.
c/o Heller Ehrman White & McAuliffe LLP
275 Middlefield Road
Menlo Park, CA 94025

To the Purchaser at: The address listed after the Purchaser's signature.

7. ***Binding Effect***. This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

8. ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

9. ***Entire Agreement***. This Agreement constitutes the entire agreement of the parties pertaining to the Shares and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties.

10. ***Severability***. In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
a California corporation

By: /s/ Samuel R. Saks

Title: Chief Executive Officer

/s/ Bruce C. Cozadd
Bruce C. Cozadd

Address: _____

_____

_____

Fax Number: _____

Email: _____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby, including, without limitation, the terms of Section 2 of this Agreement.

/s/ Sharon L. Hoffman
Signature of Spouse
(Write "N/A" if not applicable)

EXHIBIT 10.10

JAZZ PHARMACEUTICALS, INC.
STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "***Agreement***") is entered into as of April 30, 2003, by and among Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Bruce C. Cozadd (the "***Founder***").

RECITALS

A. The Founder currently owns 660,000 of the outstanding shares of the Company's Common Stock (the "***Shares***").

B. The Company and the Founder wish to enter into this Agreement in order to provide the Company with certain rights of repurchase with respect to the Shares.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Founder's willful misconduct or gross negligence that is materially injurious to the Company; (b) Founder's conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; (c) Founder's commission of any act of fraud with respect to the Company; or (d) Founder's willful violation of any federal or state securities law; or (e) Founder's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Founder with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Founder has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Founder terminates his Services because of (a) a substantial diminution in the nature, status or prestige of

Founder's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Founder's responsibilities as they exist prior to a Change of Control, (b) a substantial diminution in Founder's compensation or benefits, or (c) the Company requires the Founder to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.0023 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Founder to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Founder that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Founder that are not subject to the Right of Repurchase.

2. ***Right of Company to Repurchase Shares***.

2.1 ***Repurchase Right***. Except as provided in Section 2.2 below, if the Founder terminates his Services or the Company terminates the Founder's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Founder for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary following April 1, 2003 (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following April 1, 2003).

2.2 ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 2.1 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Founder's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Founder's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Founder will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Founder's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares.

2.3 ***Repurchase Procedure***. The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Founder within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow***.

3.1 ***Restrictions on Transfer***. The Founder agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of April 30, 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Founder, or to trusts for the benefit of such persons or the Founder (provided that the transferee has agree in writing to be bound by the restrictions on transfers by Founders under this Agreement), the Founder may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares***. Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Founder in blank in the form attached hereto as Exhibit B.

4. ***Company Enforcement***.

4.1 ***Stop-Transfer Orders***. The Founder agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

5. ***Term and Termination***.

This Agreement, including without limitation the right of repurchase set forth herein, shall terminate upon the agreement in writing to terminate by the Company and the Founder.

6. ***Legend Requirement***.

All certificates evidencing shares subject to this Agreement shall, during the term of this Agreement, bear such restrictive legends as the Company and the Company's counsel deem necessary or advisable under applicable law or pursuant to this Agreement, including, without limitation, the following:

> "CERTAIN OF THE SECURITIES REPRESENTED HEREBY MAY BE SUBJECT TO A RIGHT OF REPURCHASE BY THE COMPANY PURSUANT TO AN AGREEMENT RELATING TO SUCH SECURITIES, SHOULD THE PERSON INITIALLY ISSUED THESE SECURITIES CEASE TO BE EMPLOYED BY THE COMPANY OR ANY AFFILIATE THEREOF, AND SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IF SUCH SECURITIES ARE SUBJECT TO SUCH RIGHT OF REPURCHASE."

7. ***Tax Advice***.

The Founder acknowledges that he has not relied and will not rely upon the Company with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Founder assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares. The Founder has executed and delivered to the Company an Acknowledgment in the form of Exhibit D hereto.

8. ***Miscellaneous***.

8.1 ***Binding Effect***. This Agreement shall be binding upon, and inure to the benefit of, the executors, administrators, heirs, legal representatives, successors, and assigns of the parties hereto.

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

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

8.4 ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

8.5 ***Entire Agreement***. This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings.

8.6 ***Adjustments***. This Agreement, and the rights and obligations of the parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

8.7 ***Amendment***. This Agreement may be amended by the written consent of the Company and Founder.

8.8 ***Enforcement***. If any portion of this Agreement is determined to be invalid or unenforceable, the remainder shall be valid and enforceable to the maximum extent possible.

IN WITNESS WHEREOF, the parties hereto have executed this Stock Restriction Agreement as of the date first above written.

Company:

JAZZ PHARMACEUTICALS, INC.
a California corporation

By: /s/ Samuel R. Saks
Samuel R. Saks, Chief Executive Officer

Founder:

/s/ Bruce C. Cozadd
Bruce C. Cozadd

Address: _____

_____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Founder agrees to be bound by the terms of this Agreement as to such spouse's interest, whether as community property or otherwise, if any, in the Shares, including, without limitation, the terms of Sections 2 and 3 of this Agreement.

_____
Founder's Spouse, if applicable

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Founder***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Stock Restriction Agreement, dated as of April ____, 2003 (the "***Agreement***") between the Company and the Founder (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Founder and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Founder and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Founder irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Founder does hereby irrevocably constitute and appoint you as Founder's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Founder shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Founder, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Founder a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Founder's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Founder a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Founder, you shall deliver all of the same to Founder and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Founder while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you

may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

FOUNDER: [_____]

_____

_____

_____

Founder's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT B

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Stock Restriction Agreement between the undersigned ("***Founder***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated April __, 2003 (the "***Agreement***"), Founder hereby sells, assigns and transfers unto the Company _____ _____ (_____) shares of the Common Stock of the Company, standing in Founder's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Founder.

EXHIBIT C

PROTECTIVE ELECTION PURSUANT TO SECTION 83 OF THE
INTERNAL REVENUE CODE TO INCLUDE IN GROSS INCOME
THE EXCESS OVER THE PURCHASE PRICE, IF ANY, OF THE VALUE OF
PROPERTY TRANSFERRED IN CONNECTION WITH SERVICES

The undersigned hereby elects pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended, to include in the undersigned's gross income for the 2003 taxable year the excess (if any) of the fair market value of the property described below, over the amount the undersigned paid for such property, and supplies herewith the following information in accordance with the Treasury regulations promulgated under Section 83(b):

1. The undersigned's name, address and taxpayer identification (social security) number are:

Name: _____

Address: _____

_____

_____

_____

Social Security Number: _____

2. The property with respect to which the election is made consists of 660,000 shares of common stock of Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***").

3. The property described above was initially acquired by the undersigned on March 20, 2003, and was not then subject to a substantial risk of forfeiture. On _____, 2003, the undersigned agreed to the imposition of restrictions on the above-described property. This filing is protective only, and is made solely to bar application of Section 83(a) of the Code, if it is determined that a transfer of property occurred in connection with the imposition of restrictions on the above-described property. The taxable year to which this election relates is 2003.

4. The above property is subject to a right of repurchase by the Company at $0.0023 per share, if the undersigned ceases to be an employee of, director of, or a consultant to, the Company or an affiliate of the Company.

5. The fair market value of the above property at the time of transfer (determined without regard to any restrictions other than those which by their terms will never lapse) was $0.0023 per share.

6. The amount paid or the value of the property transferred for the above property by the undersigned was $0.0023 per share.

7. A copy of this election has been furnished to the Company, and a copy will be filed with the income tax return to the undersigned to which this election relates.

Date: _____

_____

Bruce C. Cozadd

EXHIBIT D

ACKNOWLEDGMENT AND STATEMENT
OF DECISION REGARDING ELECTION
PURSUANT TO SECTION 83(b) OF
THE INTERNAL REVENUE CODE

The undersigned (which term includes the undersigned's spouse), a purchaser of 660,000 shares of Common Stock of Jazz Pharmaceuticals, Inc (the "Company"), has agreed to have certain restrictions placed on such shares pursuant to the terms and conditions set forth in a Stock Restriction Agreement dated as of _____, 2003 (the "Agreement"), and hereby states as follows:

1. The undersigned acknowledges receipt of a copy of the Agreement. The undersigned has carefully reviewed the Agreement.

2. The undersigned either [check as applicable]:

_____(a) has consulted and has been fully advised by, the undersigned's own tax advisor, _____, whose business address is _____, regarding the federal, state and local tax consequences of purchasing shares under the Agreement, and particularly regarding the advisability of making elections pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and pursuant to the corresponding provisions, if any, of applicable state laws; or

_____(b) has knowingly chosen not to consult such a tax advisor.

3. The undersigned hereby states that the undersigned has decided [check as applicable]:

_____(a) to make an election pursuant to Section 83(b) of the Code, and is submitting to the Company, together with the undersigned's executed Agreement, an executed form headed in part "Election Pursuant to Section 83(b) of the Internal Revenue Code," which is attached as Exhibit A to this Acknowledgment; or

_____(b) not to make an election pursuant to Section 83(b) of the Code.

4. Neither the Company nor any representative of the Company has made any warranty or representation to the undersigned with respect to the tax consequences of the

undersigned's purchase of shares under the Agreement or of the making or failure to make an election pursuant to Section 83(b) of the Code or the corresponding provisions, if any, of applicable state law.

5. The undersigned is also submitting to the Company, together with the Agreement, an executed original of an election, if any is made, of the undersigned pursuant to provisions of state law corresponding to Section 83(b) of the Code, if any, which are applicable to the undersigned's purchase of shares under the Agreement.

Date: _____ _____

Bruce C. Cozadd

Date: _____ _____

[Purchaser's Spouse, if applicable]

Exhibit 10.11

JAZZ PHARMACEUTICALS, INC.
AMENDMENT TO STOCK RESTRICTION AGREEMENT

THIS AMENDMENT TO STOCK RESTRICTION AGREEMENT (the "***Amendment***") is entered into as of October 30, 2003, by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Bruce C. Cozadd (the "***Founder***").

RECITALS

A. The Company and the Founder entered into a Stock Restriction Agreement dated April 30, 2003 (the "***Restriction Agreement***") in order to provide the Company with certain rights to repurchase shares of the Company's Common Stock held by the Founder.

B. On the date hereof, the Founder purchased from another shareholder of the Company 660,000 shares of the Company's Common Stock, subject to the Company's right of repurchase.

C. The Company and the Founder wish to enter into this Amendment so that the increase in the number of shares now held by the Founder is reflected in the Restriction Agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Amendment to the Definition of "Shares".*** The definition of "Shares" as set forth in Recital A of the Restriction Agreement is hereby amended to mean 1,320,000 shares of the Company's Common Stock held by the Founder.

2. ***Effectiveness; Continuity of Terms***. This Amendment shall be effective when executed by the Company and the Founder. All the other terms and provisions of the Restriction Agreement shall remain in full force and effect.

3. ***Counterparts***. This Amendment may be executed in counterparts, each of which will be deemed an original and which together will constitute one in the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Stock Restriction Agreement as of the date first above written.

Company:

JAZZ PHARMACEUTICALS, INC.
a California corporation

By: /s/ Samuel R. Saks
Samuel R. Saks, President

Founder:

/s/ Bruce C. Cozadd
Bruce C. Cozadd

Exhibit 10.12

JAZZ PHARMACEUTICALS, INC.
COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "***Agreement***") is made and entered into as of October 30, 2003 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Bruce C. Cozadd (the "***Purchaser***").

A. The Company and Purchaser wish to complete a transaction pursuant to which the Purchaser will purchase 660,000 shares of the Company's Common Stock on the terms of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Purchaser's willful misconduct or gross negligence that is materially injurious to the Company; (b) Purchaser's conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; (c) Purchaser's commission of any act of fraud with respect to the Company; or (d) Purchaser's willful violation of any federal or state securities law; or (e) Purchaser's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Purchaser with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Purchaser has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Purchaser terminates his Services because of (a) a substantial diminution in the nature, status or prestige of Purchaser's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Purchaser's responsibilities as they exist prior to a Change of Control, (b) a substantial diminution in Purchaser's compensation or benefits, or (c) the Company requires the Purchaser to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.10 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Purchaser to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Purchaser that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Purchaser that are not subject to the Right of Repurchase.

2. ***Right to Repurchase Shares***.

2.1 ***Issuance of Shares***. The Company hereby sells and will issue to Purchaser, and Purchaser hereby purchases from the Company, 660,000 shares of the Company's Common Stock (the "***Shares***") at a price per share of $0.10 pursuant to the Prior Agreement.

2.2 ***Repurchase Right***. Except as provided in Section 2.2 below, if the Purchaser terminates his Services or the Company terminates the Purchaser's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Purchaser for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary after April 1, 2003 (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following April 1,2003). The number of Shares with respect to which the Company's Right of Repurchase shall expire pursuant to this Section 2.2 shall be appropriately adjusted for stock dividends, combinations, splits, recapitalizations and the like.

2.3 ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 2.2 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Purchaser will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares

2.4 ***Repurchase Procedure***. The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Purchaser within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow***.

3.1 ***Restrictions on Transfer***. The Purchaser agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of April 30, 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Purchaser, or to trusts for the benefit of such persons or the Purchaser (provided that the transferee has agreed in writing to be bound by the restrictions on transfers by Purchasers under this Agreement), the Purchaser may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares***. Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Purchaser in blank in the form attached hereto as Exhibit B.

4. ***Restrictions on Resale of Shares***.

4.1 ***Legends***. The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legends:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT.

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER OF SUCH SECURITIES. PURSUANT TO THE TERMS OF SUCH AGREEMENT, THE COMPANY HAS A RIGHT TO REPURCHASE SUCH SECURITIES AND AN IRREVOCABLE PROXY TO VOTE SUCH SECURITIES UNDER CERTAIN CIRCUMSTANCES. A COPY OF THE AGREEMENT CAN BE OBTAINED FROM THE SECRETARY OF THE COMPANY."

4.2 ***Market Standoff***. The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of a public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

5. ***Company Enforcement***.

5.1 ***Stop-Transfer Orders***. The Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

6. ***Representations and Acknowledgments of the Purchaser***. The Purchaser hereby represents, warrants, acknowledges and agrees that:

6.1 ***Investment***. The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person. The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

6.2 ***Access to Information***. The Purchaser has had the opportunity to ask questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

6.3 ***Pre-Existing Relationship***. The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

6.4 ***Speculative Investment***. The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

6.5 ***Unregistered Securities***.

(a) The Purchaser must bear the economic risk of investment for an indefinite period of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

7. ***Tax Advice***. The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

8. ***No Commitment***. Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

9. ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

10. ***Binding Effect***. This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

11. ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

12. ***Entire Agreement***. This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings. Any previous agreement between the Company and Purchaser relative to the subject matter hereof is superseded by this Agreement.

13. ***Severabilility***. In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

14. ***Adjustments***. This Agreement, and the rights and obligations of the parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
A California corporation

By: /s/ Carol A. Gamble
Title: Vice President and General Counsel

/s/ Bruce C. Cozadd
Bruce C. Cozadd

Address:

Fax Number:

E-mail:

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby.

/s/ Sharon J. Hoffman
Signature of Spouse
(Write "N/A" if not applicable.)

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Common Stock Purchase Agreement, dated as of October____, 2003 (the "***Agreement***") between the Company and the Purchaser (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Purchaser shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Purchaser, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Purchaser a certificate or certificates representing so many shares of stock as are not then

subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Purchaser's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

PURCHASER: [_____]

Dated: _____

_____

_____

Purchaser's Spouse *(if applicable)*

ESCROW AGENT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT 10.13

JAZZ PHARMACEUTICALS, INC.
COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "***Agreement***") is made and entered into as of March 20, 2003 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Samuel R. Saks (the "***Purchaser***").

A. The Purchaser is a founder, officer and director of the Company.

B. The Purchaser and the Company desire to specify the terms and conditions of Purchaser's equity participation in the Company.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Issuance of Shares; Purchase Price***. The Purchaser hereby purchases and the Company hereby sells 3,300,000 shares of the Company common stock (the "***Shares***") at a purchase price consisting of $0.0003 per share payable in cash.

2. ***Restrictions on Resale of Shares***.

2.1 ***Legends***. The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legend:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT."

2.2 ***Market Standoff***. The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of the initial public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

3. ***Representations and Acknowledgments of the Purchaser***. The Purchaser hereby represents, warrants, acknowledges and agrees that:

3.1 ***Investment***. The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person. The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

3.2 ***Access to Information***. The Purchaser has had the opportunity to ask questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

3.3 ***Pre-Existing Relationship***. The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

3.4 ***Speculative Investment***. The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

3.5 ***Unregistered Securities***.

(a) The Purchaser must bear the economic risk of investment for an indefinite period of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

4. ***Tax Advice***. The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

5. ***No Commitment***. Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

6. ***Notices***. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally or five days after mailing if mailed by first class United States mail, certified or registered with return receipt requested, postage prepaid, and addressed as follows:

To the Company at:	Jazz Pharmaceuticals, Inc. c/o Heller Ehrman White & McAuliffe LLP 275 Middlefield Road Menlo Park, CA 94025
To the Purchaser at:	The address listed after the Purchaser's signature.

7. ***Binding Effect***. This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

8. ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

9. ***Entire Agreement***. This Agreement constitutes the entire agreement of the parties pertaining to the Shares and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties.

10. ***Severability***. In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
A California corporation

By: /s/ Bruce C. Cozadd
Title: Chairman

/s/ Samuel R. Saks
Samuel R. Saks

Address: _____

_____

_____

Fax Number: _____

E-mail: _____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby, including, without limitation, the terms of Section 2 of this Agreement.

_____
Signature of Spouse
(Write "N/A" if not applicable.)

Exhibit 10.14

JAZZ PHARMACEUTICALS, INC.
STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "***Agreement***") is entered into as of April 30, 2003, by and among Jazz Pharmaceuticals, Inc., a California corporation (the "Company"), and Samuel R. Saks (the "***Founder***").

RECITALS

A. The Founder currently owns 3,300,000 of the outstanding shares of the Company's Common Stock (the "***Shares***").

B. The Company and the Founder wish to enter into this Agreement in order to provide the Company with certain rights of repurchase with respect to the Shares.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Founder's willful misconduct or gross negligence that is materially injurious to the Company; (b) Founder's conviction or plea of guilt or nolo contender to any felony or crime involving moral turpitude; (c) Founder's commission of any act of fraud with respect to the Company; or (d) Founder's willful violation of any federal or state securities law; or (e) Founder's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Founder with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Founder has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Founder terminates his Services because of (a) a substantial diminution in the nature, status or prestige of Founder's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Founder's responsibilities as they exist prior to a Change of Control, -(b) a substantial diminution in Founder's compensation or benefits, or (c) the Company requires the Founder to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.0023 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Founder to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Founder that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Founder that are not subject to the Right of Repurchase.

2. ***Right of Company to Repurchase Shares.***

2.1 ***Repurchase Right***. Except as provided in Section 2.2 below, if the Founder terminates his Services or the Company terminates the Founder's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Founder for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary following April 1, 2003 (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following April 1, 2003).

2.2 ***Acceleration of Lapse of Repurchase Rights Upon Certain Events.*** Notwithstanding the provisions of Section 2.1 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Founder's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Founder's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Founder will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Founder's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares

2.3 ***Repurchase Procedure.*** The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Founder within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow.***

3.1 ***Restrictions on Transfer***. The Founder agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of April 30, 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Founder, or to trusts for the benefit of such persons or the Founder (provided that the transferee has agree in writing to be bound by the restrictions on transfers by Founders under this Agreement), the Founder may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares***. Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Founder in blank in the form attached hereto as Exhibit B.

4. ***Company Enforcement.***

4.1 ***Stop-Transfer Orders***. The Founder agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

5. ***Term and Termination.***

This Agreement, including without limitation the right of repurchase set forth herein, shall terminate upon the agreement in writing to terminate by the Company and the Founder.

6. ***Legend Requirement.***

All certificates evidencing shares subject to this Agreement shall, during the term of this Agreement, bear such restrictive legends as the Company and the Company's counsel deem necessary or advisable under applicable law or pursuant to this Agreement, including, without limitation, the following:

"CERTAIN OF THE SECURITIES REPRESENTED HEREBY MAY BE SUBJECT TO A RIGHT OF REPURCHASE BY THE COMPANY PURSUANT TO AN AGREEMENT RELATING

TO SUCH SECURITIES, SHOULD THE PERSON INITIALLY ISSUED THESE SECURITIES CEASE TO BE EMPLOYED BY THE COMPANY OR ANY AFFILIATE THEREOF, AND SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IF SUCH SECURITIES ARE SUBJECT TO SUCH RIGHT OF REPURCHASE."

7. ***Tax Advice.***

The Founder acknowledges that he has not relied and will not rely upon the Company with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Founder assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares. The Founder has executed and delivered to the Company an Acknowledgment in the form of Exhibit D hereto.

8. ***Miscellaneous.***

8.1 ***Binding Effect***. This Agreement shall be binding upon, and inure to the benefit of, the executors, administrators, heirs, legal representatives, successors, and assigns of the parties hereto.

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

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

8.4 ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

8.5 ***Entire Agreement***. This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings.

8.6 ***Adjustments***. This Agreement, and the rights and obligations of the

parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

8.7 ***Amendment***. This Agreement may be amended by the written consent of the Company and Founder.

8.8 ***Enforcement***. If any portion of this Agreement is determined to be invalid or unenforceable, the remainder shall be valid and enforceable to the maximum extent possible.

IN WITNESS WHEREOF, the parties hereto have executed this Stock Restriction Agreement as of the date first above written.

Company:

JAZZ PHARMACEUTICALS, INC
a California corporation

By: /s/ Bruce C. Cozadd
Bruce C. Cozadd, Chairman

Founder:

/s/ Samuel R. Saks
Samuel R. Saks

Address: _____

_____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Founder agrees to be bound by the terms of this Agreement as to such spouse's interest, whether as community property or otherwise, if any, in the Shares, including, without limitation, the terms of Sections 2 and 3 of this Agreement.

_____
Founder's Spouse, if applicable

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Founder***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Stock Restriction Agreement, dated as of April __, 2003 (the "***Agreement***") between the Company and the Founder (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Founder and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Founder and the Company hereby irrevocably authorize and direct you' to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Founder irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Founder does hereby irrevocably constitute and appoint you as Founder's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Founder shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Founder, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Founder a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Founder's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Founder a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Founder, you shall deliver all of the same to Founder and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Founder while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

Dated: _____

FOUNDER: [_____]

_____
_____

_____
Founder's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT B

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Stock Restriction Agreement between the undersigned ("***Founder***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated April __, 2003 (the "***Agreement***"), Founder hereby sells, assigns and transfers unto the Company _____ _____(_____) shares of the Common Stock of the Company, standing in Founder's name on the books of the Company and represented by Certificate(s) No(s). _____ , and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Founder.

EXHIBIT C

PROTECTIVE ELECTION PURSUANT TO SECTION 83 OF THE
INTERNAL REVENUE CODE TO INCLUDE IN GROSS INCOME
THE EXCESS OVER THE PURCHASE PRICE, IF ANY, OF THE VALUE OF
PROPERTY TRANSFERRED IN CONNECTION WITH SERVICES

The undersigned hereby elects pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended, to include in the undersigned's gross income for the 2003 taxable year the excess (if any) of the fair market value of the property described below, over the amount the undersigned paid for such property, and supplies herewith the following information in accordance with the Treasury regulations promulgated under Section 83(b):

1. The undersigned's name, address and taxpayer identification (social security) number are:

Name: Samuel R. Saks

Address: _____

_____

_____

_____

Social Security Number:

_____

2. The property with respect to which the election is made consists of 3,300,000 shares of common stock of Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***").

3. The property described above was initially acquired by the undersigned on March 20, 2003, and was not then subject to a substantial risk of forfeiture. On April 30, 2003, the undersigned agreed to the imposition of restrictions on the above-described property. This filing is protective only, and is made solely to bar application of Section 83(a) of the Code, if it is determined that a transfer of property occurred in connection with the imposition of restrictions on the above-described property. The taxable year to which this election relates is 2003.

4. The above property is subject to a right of repurchase by the Company at $0.0023 per share, if the undersigned ceases to be an employee of, director of, or a consultant to, the Company or an affiliate of the Company.

5. The fair market value of the above property at the time of transfer (determined without regard to any restrictions other than those which by their terms will never lapse) was $0.0023 per share.

6. The amount paid or the value of the property transferred for the above property by the undersigned was $0.0023 per share.

7. A copy of this election has been furnished to the Company, and a copy will be filed with the income tax return to the undersigned to which this election relates.

Date: 4/30/03

/s/ Samuel R. Saks

Samuel R. Saks

EXHIBIT D

ACKNOWLEDGMENT AND STATEMENT
OF DECISION REGARDING ELECTION
PURSUANT TO SECTION 83(b) OF
THE INTERNAL REVENUE CODE

The undersigned (which term includes the undersigned's spouse), a purchaser of 3,300,000 shares of Common Stock of Jazz Pharmaceuticals, Inc (the "Company"), has agreed to have certain restrictions placed on such shares pursuant to the terms and conditions set forth in a Stock Restriction Agreement dated as of _____, 2003 (the "Agreement"), and hereby states as follows:

1. The undersigned acknowledges receipt of a copy of the Agreement. The undersigned has carefully reviewed the Agreement.

2. The undersigned either [check as applicable]:

_____ (a) has consulted and has been fully advised by, the undersigned's own tax advisor, _____, whose business address is _____, regarding the federal, state and local tax consequences of purchasing shares under the Agreement, and particularly regarding the advisability of making elections pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"), and pursuant to the corresponding provisions, if any, of applicable state laws; or

_____ (b) has knowingly chosen not to consult such a tax advisor.

3. The undersigned hereby states that the undersigned has decided [check as applicable]:

_____ (a) to make an election pursuant to Section 83(b) of the Code, and is submitting to the Company, together with the undersigned's executed Agreement, an executed form headed in part "Election Pursuant to Section 83(b) of the Internal Revenue Code," which is attached as Exhibit A to this Acknowledgment; or

_____ (b) not to make an election pursuant to Section 83(b) of the Code.

4. Neither the Company nor any representative of the Company has made any warranty or representation to the undersigned with respect to the tax consequences of the undersigned's purchase of shares under the Agreement or of the making or failure to make an election pursuant to Section 83(b) of the Code or the corresponding provisions, if any, of applicable state law.

5. The undersigned is also submitting to the Company, together with the Agreement, an executed original of an election, if any is made, of the undersigned pursuant to provisions of state law corresponding to Section 83(b) of the Code, if any, which are applicable to the undersigned's purchase of shares under the Agreement.

Date: _____

_____
Samuel R. Saks

Date: _____

_____
[Purchaser's Spouse, if applicable]

Exhibit 10.15

JAZZ PHARMACEUTICALS, INC.
AMENDMENT TO STOCK RESTRICTION AGREEMENT

THIS AMENDMENT TO STOCK RESTRICTION AGREEMENT (the "***Amendment***") is entered into as of October 30, 2003, by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Samuel R. Saks (the "***Founder***").

RECITALS

A. The Company and the Founder entered into a Stock Restriction Agreement dated April 30, 2003 (the "***Restriction Agreement***") in order to provide the Company with certain rights to repurchase shares of the Company's Common Stock held by the Founder.

B. On the date hereof, the Founder sold 660,000 shares of the Company's Common Stock to another shareholder of the Company.

C. The Company and the Founder wish to enter into this Amendment so that the decrease in the number of shares now held by the Founder is reflected in the Restriction Agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Amendment to the Definition of "Shares".*** The definition of "Shares" as set forth in Recital A of the Restriction Agreement is hereby amended to mean 2,640,000 shares of the Company's Common Stock held by the Founder.

2. ***Effectiveness; Continuity of Terms***. This Amendment shall be effective when executed by the Company and the Founder. All the other terms and provisions of the Restriction Agreement shall remain in full force and effect.

3. ***Counterparts***. This Amendment may be executed in counterparts, each of which will be deemed an original and which together will constitute one in the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Stock Restriction Agreement as of the date first above written.

Company:

JAZZ PHARMACEUTICALS, INC.
a California corporation

By: /s/ Bruce C. Cozadd
Bruce C. Cozadd, Chairman

Founder:

/s/ Samuel R. Saks
Samuel R. Saks

EXHIBIT 10.16

JAZZ PHARMACEUTICALS, INC.
AMENDED AND RESTATED STOCK PURCHASE AGREEMENT

THIS AMENDED AND RESTATED COMMON STOCK PURCHASE AGREEMENT (the "***Agreement***") is made and entered into as of April 30, 2003 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Robert M. Myers (the "***Purchaser***").

A. The Company and Purchaser entered into that certain Common Stock Purchase Agreement, dated March 31, 2003 (the "***Prior Agreement***"), pursuant to which Purchaser purchased 815,000 shares of the Company's Common Stock.

C. The Company and Purchaser wish to amend and replace the Prior Agreement with this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Purchaser's willful misconduct or gross negligence that is materially injurious to the Company; (b) Purchaser's conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; (c) Purchaser's commission of any act of fraud with respect to the Company; or (d) Purchaser's willful violation of any federal or state securities law; or (e) Purchaser's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Purchaser with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Purchaser has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Purchaser terminates his Services because of (a) a substantial diminution in the nature, status or prestige of Purchaser's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Purchaser's responsibilities as they exist prior to a Change of Control, (b) a substantial diminution in Purchaser's compensation or benefits, or (c) the Company requires the Purchaser to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.0023 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Purchaser to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Purchaser that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Purchaser that are not subject to the Right of Repurchase.

2. ***Right to Repurchase Shares.***

2.1 ***Issuance of Shares.*** The Company hereby acknowledges that it sold, and Purchaser purchased, 815,000 shares of the Company's Common Stock (the "***Shares***") at a price per share of $0.0023 pursuant to the Prior Agreement.

2.2 ***Repurchase Right.*** Except as provided in Section 2.3 below, if the Purchaser terminates his Services or the Company terminates the Purchaser's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Purchaser for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect (a) 14,896 Shares each month after the date of the Prior Agreement that the Purchaser serves as an employee or consultant, so that the Company's right to repurchase shall have expired with respect to 715,000 of the Shares four years after the date of the Prior Agreement; and (b) by 50,000 Shares on the second anniversary of the Prior Agreement and by an additional 2,084 Shares each month thereafter that the Purchaser serves as an employee or consultant, so that the Company's right to repurchase shall have expired with respect to 100,000 of the Shares ("***Second Tranche Shares***") four years after the date of the Prior Agreement; provided, further, if, in the reasonable judgment of the Board of Directors of the Company, the Company achieves the Milestone (as defined hereinafter) prior to the second anniversary of the Prior Agreement, the number of Second Tranche Shares subject to the Company's Right of Repurchase shall immediately be reduced by a number of shares equal to 2,084 multiplied by the number of months elapsed between the date of this Agreement and achievement of the Milestone and by an additional 2,084 shares each month thereafter that the Purchaser serves as an employee or consultant, so that the Company's right to repurchase shall have expired with respect to all of the Second Tranche Shares four years after the date of the Prior Agreement. For purposes of this Agreement, "Milestone" means the completion of a transaction involving a commitment of at least $1,000,000 by the Company in connection with the acquisition or licensing of one or more products, programs or technologies by the Company. The number of Shares with respect to which the Company's Right of Repurchase shall expire pursuant to this Section 2.2 shall be appropriately adjusted for stock dividends, combinations, splits, recapitalizations and the like.

2.3 ***Acceleration of Lapse of Repurchase Rights Upon certain Events.*** Notwithstanding the provisions of Section 2.2 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Purchaser will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares

2.4 ***Repurchase Procedure.*** The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Founder within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow.***

3.1 ***Restrictions on Transfer.*** The Purchaser agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of _____, 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Purchaser, or to trusts for the benefit of such persons or the Purchaser (provided that the transferee has agree in writing to be bound by the restrictions on transfers by Purchasers under this Agreement), the Purchaser may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares.*** Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Purchaser in blank in the form attached hereto as Exhibit B.

4. ***Restrictions on Resale of Shares.***

4.1 ***Legends.*** The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legends:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT.

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER OF SUCH SECURITIES. PURSUANT TO THE TERMS OF SUCH AGREEMENT, THE COMPANY HAS A RIGHT TO REPURCHASE SUCH SECURITIES AND AN IRREVOCABLE PROXY TO VOTE SUCH SECURITIES UNDER CERTAIN CIRCUMSTANCES. A COPY OF THE AGREEMENT CAN BE OBTAINED FROM THE SECRETARY OF THE COMPANY."

4.2 ***Market Standoff.*** The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of a public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

5. ***Company Enforcement.***

5.1 ***Stop-Transfer Orders.*** The Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

6. ***Representations and Acknowledgments of the Purchaser.*** Purchaser hereby represents, warrants, acknowledges and agrees that:

6.1 ***Investment.*** The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person. The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

6.2 ***Access to Information.*** The Purchaser has had the opportunity to ask questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

6.3 ***Pre-Existing Relationship.*** The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

6.4 ***Speculative Investment.*** The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

6.5 ***Unregistered Securities.***

(a) The Purchaser must bear the economic risk of investment for an indefinite period of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

7. ***Tax Advice.*** The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

8. ***No Commitment.*** Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

9. ***Notices.*** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

10. ***Binding Effect.*** This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

11. ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

12. ***Entire Agreement.*** This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings. Any previous agreement between the Company and Purchaser relative to the subject matter hereof, including without limitation the Prior Agreement, is superseded by this Agreement.

13. ***Severability.*** In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

14. ***Adjustments.*** This Agreement, and the rights and obligations of the parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
A California corporation

By: /s/ Samuel Saks

Title: Chief Executive Officer

/s/ Robert M. Myers
Robert M. Myers

Address:

Fax Number:

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby.

Signature of Spouse (if applicable)

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the teams of that certain Amended and Restated Common Stock Purchase Agreement, dated as of April __, 2003 (the "***Agreement***") between the Company and the Purchaser (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Purchaser shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Purchaser, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Purchaser a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Purchaser's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of

said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Date: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____
Dated: _____

Date: _____

PURCHASER: [_____]

_____

_____

_____
Purchaser's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT B

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Amended and Restated Common Stock Purchase Agreement between the undersigned ("***Purchaser***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated April __, 2003 (the "***Agreement***"), Purchaser hereby sells, assigns and transfers unto the Company_____ (_____) shares of the Common Stock of the Company, standing in Purchaser's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Purchaser.

Exhibit 10.17

December 18, 2003

Robert M. Myers

Amendment No. 1 to Amended and Restated Stock Purchase Agreement

Dear Bob,

As we have discussed, the vesting schedule on the 815,000 shares you initially purchased as a Purchaser of Jazz Pharmaceuticals, Inc. (the "Company") was somewhat different from the vesting schedule for the other founders of the Company. Upon reflection, you and the Company have agreed that your shares should have the same vesting schedule as that of the other founders. Therefore, you and the Company hereby agree to delete Section 2.2 of the Amended and Restated Stock Purchase Agreement dated as of April 30, 2003 between you and the Company (the "Purchase Agreement"), and replace it with the following:

> "2.2 Except as provided in Section 2.3 below, if the Purchaser terminates his Services or the Company terminates the Purchaser's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Purchaser for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary following April 1, 2003 (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following April 1, 2003)."

Except as set forth above, the Purchase Agreement remains in full force and effect as originally executed.

Please sign both copies of this Amendment No. 1 and return one original to me.

Yours truly,

/s/ Carol Gamble
Carol Gamble
Vice President and General Counsel

Agreed and accepted as of the 18th day of December, 2003

/s/ Robert M. Myers
Robert M. Myers

Exhibit 10.18

JAZZ PHARMACEUTICALS, INC.
COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "***Agreement***") is made and entered into as of January 9, 2004 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Robert M. Myers (the "***Purchaser***").

A. The Company and Purchaser wish to complete a transaction pursuant to which the Purchaser will purchase 232,500 shares of the Company's Common Stock on the terms of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Purchaser's willful misconduct or gross negligence that is materially injurious to the Company; (b) Purchaser's conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; (c) Purchaser's commission of any act of fraud with respect to the Company; (d) Purchaser's willful violation of any federal or state securities law; or (e) Purchaser's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Purchaser with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Purchaser has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Purchaser terminates his Services because of (a) a substantial diminution in the nature, status or prestige of Purchaser's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Purchaser's responsibilities as they exist prior to a Change of Control, (b) a substantial diminution in Purchaser's compensation or benefits, or (c) the Company requires the Purchaser to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.10 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Purchaser to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Purchaser that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Purchaser that are not subject to the Right of Repurchase.

2. ***Right to Repurchase Shares.***

2.1 ***Issuance of Shares.*** The Company hereby sells and will issue to Purchaser, and Purchaser hereby purchases from the Company, 232,500 shares of the Company's Common Stock (the "***Shares***") at a price per share of $0.10 pursuant to the Prior Agreement.

2.2 ***Repurchase Right.*** Except as provided in Section 2.3 below, if the Purchaser terminates his Services or the Company terminates the Purchaser's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Purchaser for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary after December 18, 2003 (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following December 18, 2003). The number of Shares with respect to which the Company's Right of Repurchase shall expire pursuant to this Section 2.2 shall be appropriately adjusted for stock dividends, combinations, splits, recapitalizations and the like.

2.3 ***Acceleration of Lapse of Repurchase Rights Upon Certain Events.*** Notwithstanding the provisions of Section 2.2 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Purchaser will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares

2.4 ***Repurchase Procedure.*** The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Purchaser within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow.***

3.1 ***Restrictions on Transfer.*** The Purchaser agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of April 30, 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Purchaser, or to trusts for the benefit of such persons or the Purchaser (provided that the transferee has agreed in writing to be bound by the restrictions on transfers by Purchasers under this Agreement), the Purchaser may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares.*** Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Purchaser in blank in the form attached hereto as Exhibit B.

4. ***Restrictions on Resale of Shares.***

4.1 ***Legends.*** The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legends:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT.

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER OF SUCH SECURITIES. PURSUANT TO THE TERMS OF SUCH AGREEMENT, THE COMPANY HAS A RIGHT TO REPURCHASE SUCH SECURITIES AND AN IRREVOCABLE PROXY TO VOTE SUCH SECURITIES UNDER CERTAIN CIRCUMSTANCES. A COPY OF THE AGREEMENT CAN BE OBTAINED FROM THE SECRETARY OF THE COMPANY."

4.2 ***Market Standoff.*** The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of a public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

5. ***Company Enforcement.***

5.1 ***Stop-Transfer Orders.*** The Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

6. ***Representations and Acknowledgments of the Purchaser.*** The Purchaser hereby represents, warrants, acknowledges and agrees that:

6.1 ***Investment.*** The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person. The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

6.2 ***Access to Information.*** The Purchaser has had the opportunity to ask, questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

6.3 ***Pre-Existing Relationship.*** The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

6.4 ***Speculative Investment.*** The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital

means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

6.5 ***Unregistered Securities.***

(a) The Purchaser must bear the economic risk of investment for an indefinite period of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

7. ***Tax Advice.*** The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

8. ***No Commitment.*** Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

9. ***Notices.*** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

10. ***Binding Effect.*** This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

11. ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

12. ***Entire Agreement.*** This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings. Any previous agreement between the Company and Purchaser relative to the subject matter hereof is superseded by this Agreement.

13. ***Severabilility.*** In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

14. ***Adjustments.*** This Agreement, and the rights and obligations of the parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
A California corporation

By: /s/ Carol Gamble
Title: Vice President and General Counsel

/s/ Robert M. Myers
Robert M. Myers
Address: _____

_____

_____

Fax Number: _____

E-mail: _____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby.

/s/ Megan A. Myers
Signature of Spouse
(Write "N/A" if not applicable.)

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Common Stock Purchase Agreement, dated as of January 9, 2004 (the "***Agreement***") between the Company and the Purchaser (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Purchaser shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Purchaser, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Purchaser a certificate or certificates representing so many shares of stock as are not then

subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Purchaser's continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party, In the event of any such termination, the Company shall appoint successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Date: _____

JAZZ PHARMACEUTICALS, INC.

By: _____
Title: _____

Date: _____

_____
Robert M. Myers

_____
Purchaser's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT B

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Common Stock Purchase Agreement between the undersigned ("***Purchaser***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated January __, 2004 (the "***Agreement***"), Purchaser hereby sells, assigns and transfers unto the Company _____ (_____) shares of the Common Stock of the Company, standing in Purchaser's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Purchaser.

EXHIBIT 10.19

JAZZ PHARMACEUTICALS, INC.
AMENDED AND RESTATED STOCK PURCHASE AGREEMENT

THIS AMENDED AND RESTATED COMMON STOCK PURCHASE AGREEMENT (the "***Agreement***") is made and entered into as of April 30, 2003 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Matthew K. Fust (the "***Purchaser***").

A. The Company and Purchaser entered into that certain Common Stock Purchase Agreement, dated April 17, 2003 (the "***Prior Agreement***"), pursuant to which Purchaser purchased 330,000 shares of the Company's Common Stock.

C. The Company and Purchaser wish to amend and replace the Prior Agreement with this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Purchaser's willful misconduct or gross negligence that is materially injurious to the Company; (b) Purchaser's conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; (c) Purchaser's commission of any act of fraud with respect to the Company; or (d) Purchaser's willful violation of any federal or state securities law; or (e) Purchaser's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Purchaser with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Purchaser has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Purchaser terminates his Services because of (a) a substantial diminution in the nature, status or prestige of Purchaser's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Purchaser's responsibilities as they exist prior to a Change of Control, (b) a substantial diminution in Purchaser's compensation or benefits, or (c) the Company requires the Purchaser to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.01 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Purchaser to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Purchaser that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Purchaser that are not subject to the Right of Repurchase.

2. ***Right to Repurchase Shares***.

2.1 ***Issuance of Shares***. The Company hereby acknowledges that it sold, and Purchaser purchased, 330,000 shares of the Company's Common Stock (the "***Shares***") at a price per share of $0.01 pursuant to the Prior Agreement.

2.2 ***Repurchase Right***. Except as provided in Section 2.2 below, if the Founder terminates his Services or the Company terminates the Founder's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Founder for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary after the date of this Agreement (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following the date of this Agreement). The number of Shares with respect to which the Company's Right of Repurchase shall expire pursuant to this Section 2.2 shall be appropriately adjusted for stock dividends, combinations, splits, recapitalizations and the like.

2.3 ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 2.2 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Purchaser will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares

2.4 ***Repurchase Procedure***. The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Founder within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow***.

3.1 ***Restrictions on Transfer***. The Purchaser agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of _____, 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Purchaser, or to trusts for the benefit of such persons or the Purchaser (provided that the transferee has agree in writing to be bound by the restrictions on transfers by Purchasers under this Agreement), the Purchaser may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares***. Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Purchaser in blank in the form attached hereto as Exhibit B.

4. ***Restrictions on Resale of Shares***.

4.1 ***Legends***. The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legends:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT.

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER OF SUCH SECURITIES. PURSUANT TO THE TERMS OF SUCH AGREEMENT, THE COMPANY HAS A RIGHT TO REPURCHASE SUCH SECURITIES AND AN IRREVOCABLE PROXY TO VOTE SUCH SECURITIES UNDER CERTAIN CIRCUMSTANCES. A COPY OF THE AGREEMENT CAN BE OBTAINED FROM THE SECRETARY OF THE COMPANY."

4.2 ***Market Standoff***. The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of a public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

5. ***Company Enforcement***.

5.1 ***Stop-Transfer Orders***. The Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

6. ***Representations and Acknowledgments of the Purchaser***. The Purchaser hereby represents, warrants, acknowledges and agrees that:

6.1 ***Investment***. The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person. The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

6.2 ***Access to Information***. The Purchaser has had the opportunity to ask questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

6.3 ***Pre-Existing Relationship***. The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

6.4 ***Speculative Investment***. The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

6.5 ***Unregistered Securities***.

(a) The Purchaser must bear the economic risk of investment for an indefinite period of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

7. ***Tax Advice***. The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

8. ***No Commitment***. Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

9. ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

10. ***Binding Effect***. This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

11. ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

12. ***Entire Agreement***. This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings. Any previous agreement between the Company and Purchaser relative to the subject matter hereof, including without limitation the Prior Agreement, is superseded by this Agreement.

13. ***Severabilility***. In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

14. ***Adjustments***. This Agreement, and the rights and obligations of the parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
A California corporation

By: /s/ Samuel R. Saks
Title: Chief Executive Officer

/s/ Matthew K. Fust
Matthew K. Fust

Address: _____

_____

_____

Fax Number: _____

E-mail: _____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby.

_____
Signature of Spouse
(Write "N/A" if not applicable.)

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Amended and Restated Common Stock Purchase Agreement, dated as of April __, 2003 (the "***Agreement***") between the Company and the Purchaser (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Purchaser shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Purchaser, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Purchaser a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Purchaser's

continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

PURCHASER: [_____]

_____

_____

_____

Purchaser's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT B

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Amended and Restated Common Stock Purchase Agreement between the undersigned ("***Purchaser***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated April __, 2003 (the "***Agreement***"), Purchaser hereby sells, assigns and transfers unto the Company _____ (_____) shares of the Common Stock of the Company, standing in Purchaser's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Purchaser.

EXHIBIT 10.20

JAZZ PHARMACEUTICALS, INC.
AMENDED AND RESTATED STOCK PURCHASE AGREEMENT

THIS AMENDED AND RESTATED COMMON STOCK PURCHASE AGREEMENT (the "***Agreement***") is made and entered into as of April 30, 2003 by and between Jazz Pharmaceuticals, Inc., a California corporation (the "***Company***"), and Carol A. Gamble (the "***Purchaser***").

A. The Company and Purchaser entered into that certain Common Stock Purchase Agreement, dated April 17, 2003 (the "***Prior Agreement***"), pursuant to which Purchaser purchased 300,000 shares of the Company's Common Stock.

C. The Company and Purchaser wish to amend and replace the Prior Agreement with this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. ***Definitions.*** As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Cause***" means (a) Purchaser's willful misconduct or gross negligence that is materially injurious to the Company; (b) Purchaser's conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; (c) Purchaser's commission of any act of fraud with respect to the Company; or (d) Purchaser's willful violation of any federal or state securities law; or (e) Purchaser's willful and continued failure substantially to perform his Services; provided that the action or conduct described in clause (e) above will constitute "Cause" only if such failure continues after the Board of Directors has provided the Purchaser with a written demand for substantial performance setting forth in detail the specific respects in which it believes the Purchaser has willfully and not substantially performed his Services and a reasonable opportunity (to be not less than 30 days nor more than 90 days) to cure the same.

1.2 "***Change of Control***" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of this Company by another entity by means of consolidation, corporate reorganization or merger, or other transaction or series of related transactions, in each case excluding (x) any such transaction in which the stockholders of the Company immediately prior to such transaction own more than 50% of the voting power of acquiror (or parent thereof) in such transaction immediately after such transaction and (y) any transaction determined by the Board of Directors in good faith to be primarily for capital raising purposes.

1.3 "***Constructive Termination***" means the Purchaser terminates his Services because of (a) a substantial diminution in the nature, status or prestige of Purchaser's responsibilities, title or reporting level as they exist immediately prior to a Change of Control or the addition of responsibilities of a nature, status or prestige inconsistent with the Purchaser's responsibilities as they exist prior to a Change of Control, (b) a substantial diminution in Purchaser's compensation or benefits, or (c) the Company requires the Purchaser to relocate as a condition of his continued employment by the Company.

1.4 "***Repurchase Price***" means $0.005 per share (as appropriately adjusted for any stock combination, stock split, stock dividend, recapitalization, or other similar transaction).

1.5 "***Services***" means services to be provided by the Purchaser to the Company as an employee of the Company, a consultant to the Company, or a member of the Company's Board of Directors (or any committee thereof).

1.6 "***Unvested Shares***" means the Shares held by the Purchaser that are then subject to the Right of Repurchase.

1.7 "***Vested Shares***" means the Shares held by the Purchaser that are not subject to the Right of Repurchase.

2. ***Right to Repurchase Shares***.

2.1 ***Issuance of Shares***. The Company hereby acknowledges that it sold, and Purchaser purchased, 300,000 shares of the Company's Common Stock (the "***Shares***") at a price per share of $0.005 pursuant to the Prior Agreement.

2.2 ***Repurchase Right***. Except as provided in Section 2.2 below, if the Founder terminates his Services or the Company terminates the Founder's Services (each, a "***Termination***"), the Company has a right (but not obligation) to repurchase (the "***Right of Repurchase***") all or any portion of the Shares held by the Founder for a price per share equal to the Repurchase Price paid by cash, check, wire transfer, cancellation of indebtedness or some combination thereof; provided, however, that the Right of Repurchase shall expire with respect to 1/48th of the Shares on each monthly anniversary after the date of the Prior Agreement (i.e., so that the Right of Repurchase shall have expired with respect to all of the Shares 48 months following the date of the Prior Agreement). The number of Shares with respect to which the Company's Right of Repurchase shall expire pursuant to this Section 2.2 shall be appropriately adjusted for stock dividends, combinations, splits, recapitalizations and the like.

2.3 ***Acceleration of Lapse of Repurchase Rights Upon Certain Events***. Notwithstanding the provisions of Section 2.2 regarding expiration of the Right of Repurchase,

(a) if, prior to a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs at any time prior to the expiration of the Right of Repurchase, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares;

(b) if, within twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then all of the then Unvested Shares held by the Purchaser will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to any of the Shares; or

(c) if, more than twelve (12) months following the closing of a transaction which constitutes a Change of Control, the Company terminates the Purchaser's Services without Cause or a Constructive Termination occurs, then one-fourth (1/4th) of the Shares (or the actual number of Unvested Shares immediately prior to such termination event, if less) will become Vested Shares immediately prior to such termination event, and the Company will have no Right of Repurchase with respect to such Shares

2.4 ***Repurchase Procedure***. The Company's Right of Repurchase shall terminate if not exercised by written notice from the Company to the Founder within ninety (90) days after the date of Termination.

3. ***Transferability; Escrow***.

3.1 ***Restrictions on Transfer***. The Purchaser agrees not to transfer any Shares except as permitted by that certain Right of First Refusal and Co-Sale Agreement, dated as of , 2003, by and among the Company and the parties set forth on Exhibit A and Exhibit B thereto, as it may be amended from time to time. Notwithstanding the foregoing, except for transfers of Unvested Shares to the ancestors, descendants or spouse of the Purchaser, or to trusts for the benefit of such persons or the Purchaser (provided that the transferee has agree in writing to be bound by the restrictions on transfers by Purchasers under this Agreement), the Purchaser may not dispose of or transfer any Unvested Shares, and any such attempted disposition or transfer shall be null and void.

3.2 ***Escrow of Shares***. Pursuant to the terms of the Joint Escrow Instructions in substantially the form attached hereto as Exhibit A, the Shares issued under this Agreement shall be held by the Escrow Agent (as defined in such Joint Escrow Instructions) along with a stock assignment executed by the Purchaser in blank in the form attached hereto as Exhibit B.

4. ***Restrictions on Resale of Shares***.

4.1 ***Legends***. The Purchaser understands and acknowledges that the Shares are not registered under the Act, and that under the Act and other applicable laws the Purchaser may be required to hold such Shares for an indefinite period of time. Each stock certificate representing the Shares shall bear the following legends:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). ANY TRANSFER OF SUCH SECURITIES SHALL BE INVALID UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER OR, IN THE OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY, SUCH REGISTRATION IS UNNECESSARY FOR SUCH TRANSFER TO COMPLY WITH THE ACT.

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER OF SUCH SECURITIES. PURSUANT TO THE TERMS OF SUCH AGREEMENT, THE COMPANY HAS A RIGHT TO REPURCHASE SUCH SECURITIES AND AN IRREVOCABLE PROXY TO VOTE SUCH SECURITIES UNDER CERTAIN CIRCUMSTANCES. A COPY OF THE AGREEMENT CAN BE OBTAINED FROM THE SECRETARY OF THE COMPANY."

4.2 ***Market Standoff***. The Purchaser agrees that if so requested by the Company or any representative of the underwriters in connection with registration of a public offering of any securities of the Company under the Act, the Purchaser shall not sell or otherwise transfer any Shares or other securities of the Company during the 180 day period following the effective date of such registration statement. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180 day period.

5. ***Company Enforcement***.

5.1 ***Stop-Transfer Orders***. The Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop-transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records. The Company shall not be required to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been transferred.

6. ***Representations and Acknowledgments of the Purchaser***. The Purchaser hereby represents, warrants, acknowledges and agrees that:

6.1 ***Investment***. The Purchaser is acquiring the Shares for the Purchaser's own account, and not directly or indirectly for the account of any other person. The Purchaser is acquiring the Shares for investment and not with a view to distribution or resale thereof except in compliance with the Act and any applicable state law regulating securities.

6.2 ***Access to Information***. The Purchaser has had the opportunity to ask questions of, and to receive answers from, appropriate executive officers of the Company with respect to the terms and conditions of the transactions contemplated hereby and with respect to the business, affairs, financial condition and results of operations of the Company. The Purchaser has had access to such financial and other information as is necessary in order for the Purchaser to make a fully informed decision as to investment in the Company, and has had the opportunity to obtain any additional information necessary to verify any of such information to which the Purchaser has had access.

6.3 ***Pre-Existing Relationship***. The Purchaser further represents and warrants that the Purchaser has either (i) a pre-existing relationship with the Company or one or more of its officers or directors consisting of personal or business contacts of a nature and duration which enable the Purchaser to be aware of the character, business acumen and general business and financial circumstances of the Company or the officer or director with whom such relationship exists or (ii) such business or financial expertise as to be able to protect the Purchaser's own interests in connection with the purchase of the Shares.

6.4 ***Speculative Investment***. The Purchaser's investment in the Company represented by the Shares is highly speculative in nature and is subject to a high degree of risk of loss in whole or in part; the amount of such investment is within the Purchaser's risk capital means and is not so great in relation to the Purchaser's total financial resources as would jeopardize the personal financial needs of the Purchaser in the event such investment were lost in whole or in part.

6.5 ***Unregistered Securities***.

(a) The Purchaser must bear the economic risk of investment for an indefinite period of time because the Shares have not been registered under the Act and therefore cannot and will not be sold unless they are subsequently registered under the Act or an exemption from such registration is available. The Company has made no agreements, covenants or undertakings whatsoever to register any of the Shares under the Act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from the Act, including, without limitation, any exemption for limited sales in routine brokers' transactions pursuant to Rule 144 under the Act, will become available and any such exemption pursuant to Rule 144, if available at all, will not be available unless: (i) a public trading market then exists in the Company's common stock, (ii) adequate information as to the Company's financial and other affairs and operations is then available to the public, and (iii) all other terms and conditions of Rule 144 have been satisfied.

(b) Transfer of the Shares has not been registered or qualified under any applicable state law regulating securities and therefore the Shares cannot and will not be sold unless they are subsequently registered or qualified under any such act or an exemption therefrom is available. The Company has made no agreements, covenants or undertakings whatsoever to register or qualify any of the Shares under any such act. The Company has made no representations, warranties or covenants whatsoever as to whether any exemption from any such act will become available.

7. ***Tax Advice***. The Purchaser acknowledges that the Purchaser has not relied and will not rely upon the Company or the Company's counsel with respect to any tax consequences related to the ownership, purchase, or disposition of the Shares. The Purchaser assumes full responsibility for all such consequences and for the preparation and filing of all tax returns and elections which may or must be filed in connection with such Shares.

8. ***No Commitment***. Nothing in this Agreement constitutes an agreement that the Purchaser will be employed or retained by the Company for any term and the Purchaser acknowledges that the Purchaser serves "at will".

9. ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance written notice to the other parties hereto; provided, however, that registered or certified mail shall not be used to effectuate any such notice to addresses outside the United States.

10. ***Binding Effect***. This Agreement shall be binding upon the heirs, legal representatives and successors of the Company and of the Purchaser; provided, however, that the Purchaser may not assign any rights or obligations under this Agreement. The Company's rights under this Agreement shall be freely assignable.

11. ***Governing Law***. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be performed entirely within the State of California by residents of the State of California.

12. ***Entire Agreement***. This Agreement constitutes and contains the entire agreement of the parties pertaining to its subject matter and supersedes any and all prior and contemporaneous agreements, representations, and understandings. Any previous agreement between the Company and Purchaser relative to the subject matter hereof, including without limitation the Prior Agreement, is superseded by this Agreement.

13. ***Severabilility***. In the event that any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity, legality or enforceability of the other provisions of this Agreement or the rights of the parties hereunder.

14. ***Adjustments***. This Agreement, and the rights and obligations of the parties hereunder, shall be interpreted insofar as practicable to account for any stock combination, stock dividend, stock split, recapitalization, or other similar transaction occurring after the effective date of this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this Common Stock Purchase Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.
A California corporation

By: /s/ Samuel R. Saks

Title: Chief Executive Officer

/s/ Carol A. Gamble
Carol A. Gamble

Address: _____

_____

_____

Fax Number: _____

E-mail: _____

CONSENT OF SPOUSE
(if applicable)

By execution of this Agreement, the undersigned spouse of the Purchaser agrees to be bound by the terms of this Agreement as to that spouse's interest, whether as community property or otherwise, if any, in the Shares purchased hereby.

_____
Signature of Spouse
(Write "N/A" if not applicable.)

EXHIBIT A

JOINT ESCROW INSTRUCTIONS

[Escrow Agent Name and Address]

Ladies and Gentlemen:

As escrow agent (the "***Escrow Agent***") for both Jazz Pharmaceuticals, Inc., a California corporation, and any assignee (referred to collectively as the "***Company***"), and the undersigned purchaser of stock of the Company (the "***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Amended and Restated Common Stock Purchase Agreement, dated as of April ____, 2003 (the "***Agreement***") between the Company and the Purchaser (the "***Escrow***"), in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company exercises the Company's Right of Repurchase (as defined in the Agreement), the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company, against the simultaneous delivery to you of the purchase price (by cash, a check, promissory note, wire transfer, cancellation of indebtedness or some combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Right of Repurchase.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this Escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of the Agreement and of this Escrow Agreement, Purchaser shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

4. Upon written request of the Purchaser, but no more than once per calendar year, unless the Company's Right of Repurchase has been exercised, you will deliver to Purchaser a certificate or certificates representing so many shares of stock as are not then subject to the Company's Right of Repurchase. Within one-hundred (100) days after cessation of Purchaser's

continuous employment by the Company, or any parent or subsidiary of the Company, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Right of Repurchase.

5. If at the time of termination of this escrow you should have in your possession any documents, securities or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the outlawing of any rights under the Statute of Limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given pursuant to the notice provision set forth in the Agreement, provided any notice to be sent to Escrow Agent shall be sent to the address set forth on the signature page hereto, or such other address as the Escrow Agent may provide from time to time in accordance with the terms of the Agreement.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

19. All references to you, your and similar phrases shall refer to the Escrow Agent.

Dated: _____

COMPANY:

JAZZ PHARMACEUTICALS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

PURCHASER: [_____]

_____

_____

Purchaser's Spouse *(if applicable)*

Dated: _____

ESCROW AGENT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT B

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Amended and Restated Common Stock Purchase Agreement between the undersigned ("***Purchaser***") and Jazz Pharmaceuticals, Inc. (the "***Company***") dated April ____, 2003 (the "***Agreement***"), Purchaser hereby sells, assigns and transfers unto the Company _____ (_____) shares of the Common Stock of the Company, standing in Purchaser's name on the books of the Company and represented by Certificate(s) No(s). _____, and hereby irrevocably constitutes and appoints _____ to transfer said stock on the books of the Company with full power of substitution in the premises. THIS ASSIGNMENT MAY ONLY BE USED AS AUTHORIZED BY THE AGREEMENT.

Dated: _____

Signature:

By: _____

Name: _____

_____

Spouse (if applicable)

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Purchaser.

EXHIBIT 10.29

JAZZ PHARMACEUTICALS CASH BONUS PLAN

1. Purpose of the Plan.

The Jazz Pharmaceuticals Cash Bonus Plan is designed to provide meaningful incentive, on an annual basis, for employees of Jazz Pharmaceuticals (the "Company").

2. Who Will Participate.

Except as provided in the reminder of this paragraph, each active "regular" employee of the Company on the last day of the Plan Year (except as specifically provided in Section 6) whose Employment Start Date is November 1 of the Plan Year or earlier may participate in this Plan. Temporary employees are not eligible to participate in the Plan. Sales employees who are eligible to participate in sales incentive compensation plans are not eligible to participate in the Plan.

3. Plan Year.

The "Plan Year" is the calendar year.

4. Target Bonus Percentages.

Target Bonus Percentage levels are the percentages of Base Salary that are generally expected to apply for Bonuses for any Plan Year at and the responsibility levels below. Target Bonus Percentage levels may vary from year to year and between positions, even positions at the same level. However, as a general guideline, the Target Bonus Percentage levels which will typically be assigned to various categories of employees (and varying depending on responsibility level within each category) are as follows:

Position	Target Bonus Percentage
Chairman of the Board, Chief Executive Officer, Executive Vice President	50%
Senior Vice President	40%
Vice President	20-35%
Director (including Senior Director and Executive Director)	10-30%
Manager	5-20%
Other	3-15%

If a Participant moves to a higher Target Bonus Percentage level during the Plan Year, that Participant's Target Bonus Percentage will be reset at the higher level for the entire Plan Year. If a Participant moves to a lower Target Bonus Percentage level during the Plan Year, that Participant's Target Bonus Percentage will be reset at the lower level for the entire Plan Year.

5. Definition of Bonus Pool and Individual Bonuses.

After the end of each Plan Year, the Board will determine total Bonus Pool for the Company for the Plan Year, for allocation among Participants. The Bonus Pool will be determined in the discretion of the Board**,** and will be calculated by multiplying the Base Salary of each Participant by the product of (i) the average Target Bonus for Participant's responsibility level and (ii) the percentage (between 0 and 100) set by the Board based upon the Board's determination of the Company's success in achieving the corporate objectives for the Plan Year.

The Actual Bonus Percentage to each Participant will be based upon both (i) the Company's success in meeting its objectives for the Plan Year and (ii) the Participant's contribution to the Company's success and his/her success in achieving his/her individual objectives for the Plan Year.

The actual Bonus for each Participant is the amount calculated by multiplying (i) that Participant's Base Salary received during the Plan Year by (ii) that Participant's Bonus Percentage. Each Participant's Actual Bonus Percentage for any Plan Year will be approved by the Chief Executive Officer, except that in the case of executive officers, the Actual Bonus Percentage will be approved by the Board. No bonuses will accrue to or be payable to Participants until the Bonus Pool and Actual Bonus Percentages have been determined as described above. No Participant is entitled to any particular bonus, or any bonus, unless approved as described above.

6. Termination of Employment; Retirement; Death; Disability.

No Bonus will be paid to any employee whose employment is terminated prior to the date the Bonus is actually paid by the Company, except if such termination is due to death, retirement or disability, unless otherwise specifically agreed by the Board.

Any Participant who dies or becomes Permanently Disabled during the Plan Year will be paid a Bonus (if and to the extent earned) based upon actual Base Salary of the Participant from the beginning of the Plan Year through the date of death or Permanent Disability. Any such Bonus will be paid at the same time at which all other Participants receive their Bonuses for the Plan Year.

7. Payment of Awards.

Awards for any Plan Year will be paid in cash to a Participant (or his/her beneficiary, in the event of death), during February of the following year. Benefits under this Plan are not transferable, and the Plan is unfunded.

8. Withholding of Taxes.

Bonuses will be subject to income and employment tax withholding as required by applicable law.

9. Plan Amendments.

This Plan may be revised, modified, or terminated at any time in the sole discretion of the Compensation Committee or the Board.

10. No Employment Rights.

Nothing contained in this Plan is intended to confer any right upon any employee to continued employment with the Company.

11. Plan Administration.

This Plan will be administered by the Compensation Committee.

12. Definitions.

"Actual Bonus Percentage" means, for a Participant for any Plan Year, the percentage of the Participant's Base Salary approved by the Compensation Committee for a Bonus for that Plan Year.

"Base Salary" for any Participant means the regular salary actually paid during the Plan Year, rather than the base salary level at any particular point during the Plan Year (i.e., when calculating Bonuses for Participants who received salary increases during the Plan Year, for Participants who are hired during the Plan Year, or for Participants who retire or die during the Plan Year). Base Salary does not include any expense reimbursements, relocation payments, incentive compensation or bonuses, overtime or shift differential payments or similar one-time or unusual payments. Salary earned for periods during which a Participant is on disciplinary action are excluded from Base Salary.

"Board" means the Company's Board of Directors.

"Bonus" means a Participant's actual bonus for a Plan Year.

"Bonus Pool" for a Plan Year means the aggregate dollar amount set by the Board for the payment of Bonuses for such Plan Year to Participants.

"Compensation Committee" means the Compensation Committee of the Board.

“Employment Start Date” means the first business day on which a Participant is a regular employee of the Company, on the Company’s payroll.

“Participant” means a regular, active employee of the Company, not subject to disciplinary action on the last day of the Plan Year.

“Permanent Disability” means that a Participant has become permanently disabled under any policy of disability income insurance then in force covering employees of the Company.

“Plan” means this Jazz Pharmaceuticals Cash Bonus Plan.

“Target Bonus” means, for a Participant, the potential bonus for the Plan Year, determined by multiplying (i) the Participant’s Base Salary for the Plan Year by (ii) the Participant’s Target Bonus Percentage.

“Target Bonus Percentage” means, for a Participant for any Plan Year, the percentage of Base Salary that the Participant is targeted to earn for such Plan Year.

As in effect for 2006.

Exhibit 21.1

Subsidiaries of the Registrant

Subsidiary	Jurisdiction of Incorporation
Orphan Medical, Inc.	Delaware

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 March 6, 2007, with respect to the consolidated financial statements and schedule of Jazz Pharmaceuticals, Inc. included in the Registration Statement (Form S-1) and related Prospectus of Jazz Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Palo Alto, California
March 6, 2007

Exhibit 23.2

Consent of Independent Auditors

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated March 6, 2007, with respect to the financial statements of Orphan Medical, Inc. included in the Registration Statement (Form S-1) and related Prospectus of Jazz Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Palo Alto, California
March 6, 2007

[COOLEY GODWARD KRONISH LLP, LETTERHEAD]

Chadwick L. Mills
(650) 843-5654
cmills@cooley.com

VIA EDGAR

March 9, 2007

Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

RE: Jazz Pharmaceuticals, Inc.
Registration Statement on Form S-1
CIK: 0001232524

Dear Sir or Madam:

On behalf of Jazz Pharmaceuticals, Inc. (the "***Registrant***"), and for the purpose of registering shares of the Registrant's Common Stock with a proposed maximum aggregate offering price of $172,500,000 under the Securities Act of 1933, as amended, and pursuant to Regulation S-T promulgated thereunder, we are electronically transmitting hereunder one conformed copy of a Registration Statement on Form S-1 (the "***Registration Statement***"), together with all exhibits thereto (except for exhibits that will be filed by amendment). Manually executed signature pages have been signed prior to the time of this electronic filing and will be retained by the Registrant for five years.

Pursuant to Rule 13(c) of Regulation S-T, a filing fee of $5,296 was wired to the Securities and Exchange Commission on March 5, 2007, and verification of the receipt of said funds has been received from the SEC.

In addition to the electronic filing provided herewith, paper copies of the Registration Statement will follow via courier.

Please direct any questions or comments regarding this filing to me at (650) 843-5654 or John M. Geschke at (650) 843-5757.

Sincerely,

/s/ Chadwick L. Mills

Chadwick L. Mills

cc: Matthew K. Fust, Jazz Pharmaceuticals, Inc.
Carol A. Gamble, Esq., Jazz Pharmaceuticals, Inc.
P.J. Honerkamp, Esq., Jazz Pharmaceuticals, Inc.
Michael Nordtvedt, Esq., Davis Polk & Wardwell
John M. Geschke, Esq., Cooley Godward Kronish LLP